94-2

94th Congress
2d Session

COMMITTEE PRINT

LEGISLATIVE HISTORY

OF THE

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Public Law 93–406

PREPARED BY THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE
UNITED STATES SENATE

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FOREWORD

Industrial pensions began in America more than 100 years ago and in the last 25 years, they have enjoyed enormous growth. Today, more than 30 million American workers are relying on private pension and welfare plans as a major source of economic security in old age. The assets of private pension arrangements increased from $2.4 billion in 1940 to more than $150 billion in 1975 making these funds one of the largest sources of private capital in the economy. These changes have radically altered the retirement security expectations of the American people.

But for the most part, this phenomenal growth was largely unregulated. While the absence of substantive requirements helped promote growth of the private system, the resulting plans set up difficult and sometimes insurmountable obstacles to plan participants.

Passage of this legislation is the end product of years of study and development by the Committee on Labor and Public Welfare. For their work in this effort, I wish to extend a special thanks to all of my colleagues on the Committee whose contributions and support made this landmark reform possible. A particular tribute must be reserved for the distinguished ranking minority member of the Committee (Mr. Javits) whose efforts dating back to 1967 awakened Congress to the need for comprehensive reform.

The Employee Retirement Income Security Act responded to the recommendations of the Senate study and to the objectives of a broad consensus for comprehensive reform. The new rules reflect a careful balance of incentives and controls designed by Congress to improve the equitable character of private plans while encouraging their future growth and development.

Implementation of the ERISA standards will demand an effective administration with a unique understanding of the impact of its requirements. To aid those responsible for its administration, I have asked the committee staff to compile this legislative history with the assistance of the Department of Labor under whose direction the indexes were prepared.

HARRISON A. WILLIAMS, Jr.,
Chairman.

ACKNOWLEDGMENT

The indexes for this legislative history of the Employee Retirement Income Security Act of 1974 and the Explanatory Notes for Using the Indexes were prepared by staff of the U.S. Department of Labor at the direction of Paul J. Fasser, Jr., Assistant Secretary of Labor for Labor-Management Relations. For the dedication of that staff to the project, and for the help of other employees who contributed significantly to the effort, I wish to express my appreciation, and my particular thanks to the following: Paul R. Antsen, Richard D. Ferrone (of the Office of the Solicitor), Neilda C. Lee, Edwin A. Silver, and Ellan H. Spring, who structured and compiled the indexes; Bruce M. Leet, who helped to plan and start the project; Richard T. Wood, who kept a chronicle of pension reform legislation; and John S. Hunter, who guided the project.

HARRISON A. WILLIAMS, Jr., *Chairman.*

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Explanatory Notes for Using the Indexes

Because indexing techniques vary according to such factors as the purpose to be served, the nature of the subject matter indexed, and the conceptions of persons who do the indexing, the following explanatory notes on the indexes published herein should be helpful to their users.

The indexes were developed to facilitate use of the basic legislative documents in assisting to determine the Congressional intent underlying various provisions of the Employee Retirement Income Security Act of 1974 (ERISA). This orientation and the complex nature of the legislation resulted in two basic design features. First, the index headings are fashioned primarily to describe subjects or concepts rather than specific legislative provisions or key words. This was necessary to encompass the wide range of proposals, discussions, and modifications leading to the provisions enacted in ERISA. Thus, it may be necessary on occasion for the index user to relate a provision of ERISA or of a forerunner bill having a certain heading to an index heading stated a different way.

The second basic design feature is that subjects or concepts generally are referenced to single index headings. In other words, where multiple index headings for a particular subject could be used, only one heading is used for giving page references. Thus, once the user determines that he has found a heading covering his subject, he need not be concerned that some other heading might also cover the subject with possibly a difference in the page references. The "see" cross references are used to help in finding the correct heading. The "see also" cross references are used to indicate that there is a closely related heading.

Other points on the approach and techniques used in the indexes follow.

1. There are nine basic indexes covering broad subject areas, as follow:

Definitions
Reporting and Disclosure
Participation and Vesting
Funding
Fiduciary Responsibility
Termination Insurance
Enforcement
Internal Revenue Code
Miscellaneous

2. The documents indexed are limited to bills, reports, the "bill" print of broad amendments such as those in the nature of a substitute, and floor debates. At the end of these explanatory notes is a list of such documents printed in this legislative history. The list is annotated as to several documents which, in whole or in part, are not indexed for the purpose of avoiding duplication. For example, H.R. 4200 as passed by the Senate is not indexed because the same legislation became the Senate amendment to H.R. 2. Also, for example, the substitute bill printed in the Conference Report is not indexed because of its close similarity to the final law. In addition, prints in committee reports of the Welfare and Pension Plans Disclosure Act as it would be changed are not indexed.

While certain substantive amendments are not indexed as to the "bill" print, they are indexed as to the floor consideration on them. Technical, clerical, and conforming changes generally are not indexed where they are not described in the documents as to their subject matter.

3. The index titled Internal Revenue Code covers only matters related to the Internal Revenue Code of 1954, as amended, which do not fall within one of the other indexes.

4. The index titled Definitions covers definitions regardless of the subject area to which they pertain. As a rule, there are no cross references from the other indexes to the Definitions index. Also, definitions which seemed to have been used solely for convenience in drafting are omitted. An example would be where "Secretary" is defined to mean "Secretary of Labor." Another example would be where a term is defined solely for purposes of the provision immediately preceding the definition.

5. Certain index headings include page references only where there is broad treatment or application of the matter in the documents. These headings are:

Effective dates;
Need for . . . ;
Plans covered;
Previous law;
Regulations/rules, general authority.

Instances of narrow treatment or application, to the extent they occur in the documents, generally are not indexed separately, but may be found within the page references given under the index heading covering the particular subject to which they pertain. For example, a page reference to ERISA section 505, regarding authority to issue regulations under Title I, is included under the "regulations" main heading in the Reporting and Disclosure index, Participation and Vesting index, etc.; specific authority to issue regulations regarding the filing of annual reports may be found within the page references given under "Annual report or return—filing requirements" in the Reporting and Disclosure index.

6. The index heading "Previous law" refers to discussions or statements about the status of law before ERISA. Therefore, the refer-

ences include discussions addressed in terms of current law, since the discussions took place before enactment of ERISA.

7. The word "participants" in the indexes usually means "participants and beneficiaries."

Finally, it should be noted that any interpretation of legislative documents which is inherent or implied in the indexes or these explanatory notes is not to be considered as the official view of the U.S. Department of Labor.

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[2] Not indexed to avoid duplication with Title I in item (28).
[3] The substitute bill is not indexed to avoid duplication with item (32).

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[From the Congressional Record—House, Feb. 28, 1974]

Employee Benefit Security Act of 1973

Mr. Dent. Mr. Speaker. I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of this bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 2, and the Chair requested that the gentleman from Tennessee temporarily assume the Chair.

The Clerk read the title of the bill.

The Chairman pro tempore (Mr. Fulton). When the Committee rose on yesterday, there was pending in lieu of the committee amendment now printed in the bill H.R. 2, as one amendment in the nature of a substitute for the bill H.R. 2 the text of the bill H.R. 12906 as title I of said substitute and the text of the bill H.R. 12855 as title II of said substitute. Part 1 of title I of the said substitute, ending on page 73, line 17, had been considered as read.

The Chairman. Are there further amendments to part 1 of title I?

AMENDMENT OFFERED BY MR. DENT

Mr. Dent. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Dent: Page 54 at line 18, strike "or" and add following "savings plan" "or money purchase plans designed to invest primarily in securities described in subparagraph (B) of this paragraph,".

Mr. Dent. Mr. Chairman, I urge the adoption of the amendment.

Mr. Erlenborn. Mr. Chairman, I have been advised by the chairman, Mr. Dent, as to this amendment. I have seen the amendment, and I would join in urging its adoption.

The Chairman. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. Dent).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. Ashbrook. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ashbrook: On page 26, line 9, strike the following "on or before December 31, 1973,".

On page 26, lines 11 and 12, strike the following: "with respect to audits performed before January 1, 1976."

(Mr. Ashbrook asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Chairman, I am offering an amendment to H.R. 2 which will eliminate an arbitrary limitation on the eligibility of auditors of private pension plans. The inclusion of this arbitrary limitation in the bill was, I believe, accidental.

The two changes are necessary because the provisions in Section 104(a)(3)(C) (ii) and(iii) do not adequately and fairly take cognizance of the licensing procedures of public accountants in some 26 States including Ohio.

In 16 States, at the present time, the State legislatures have provided the measures of competency including education, experience and examination, to license independent accountants for public practice in addition to CPA's. I understand that some 400 persons a year are now being licensed in Ohio as licensed public accountants. The States in this category are as follows: Alabama, Alaska, Arizona, Georgia, Indiana, Maine, Montana, New Hampshire, New Mexico, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, and Vermont.

Of significance, too, are the 10 States which presently provide no regulation of the profession of public accounting except to restrict the title of the certified public accountant. In such jurisdictions, until comprehensive regulatory licensing standards are enacted by the respective State legislatures, there will be no means for otherwise qualified independent public accountants to perform audits for private pension plans under the current language of H.R. 2. The States in this group are as follows: Arkansas, Delaware, District of Columbia, Idaho, Kansas, Minnesota, New Jersey, North Dakota, Pennsylvania, and Wyoming.

The need for flexibility in permitting qualified personnel in these States is recognized in H.R. 2, but it is needlessly limited. If it is truly appropriate to grant the Secretary of Labor the authority to promulgate standards of competence until 1976, it should be appropriate without a cutoff date.

In making these changes to H.R. 2, I am not unmindful that the standards to be employed in providing eligibility for independent auditors must not be diminished or impaired. An important element in this bill must be the protection of the public and the establishment of competency standards.

Public interest requires that persons engaged to perform audits of these programs be independent and possess sufficient technical knowledge to carry out the engagements in a satisfactory manner.

Since reliance has been placed in the standards set by States and in the equivalency standards set by the Secretary, no artificial and unnecessary restriction on dates ought to be placed on this generally meritorious legislation.

It ought to be noted that the Securities and Exchange Commission utilizes terminology calling for "independent public accountants" and no set dates for licensure are established by that exacting regulatory authority which oversees the public interest in the investment field.

A recent example of a major Federal program setting standards for independent auditors is the revenue sharing program. Regulations

promulgated by this important office of the Department of the Treasury define qualified accountants as those licensed by the State, regardless of the date of licensure.

Professional accountants, whenever licensed, should have the opportunity to participate in this important program.

This legislation has made many strides in the private pension reform area and I do not want to see it weakened by a technical oversight which does not recognize the realities of the accounting profession in America today.

Mr. DENT. Mr. Chairman, as far as this side is concerned, I agree to the amendment and accept it, and I am sure the ranking minority member will, also.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. Ashbrook).

The amendment was agreed to.

The CHAIRMAN. Are there any further amendments to part I? If not, the Clerk will read.

The Clerk read as follows:

* * * * * * *

[The text of part 2 of H.R. 12906 appears on pp. 2833–2858.]

Mr. GAYDOS (during the reading). Mr. Chairman, I ask unanimous consent that part 2 be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AMENDMENTS OFFERED BY MS. ABZUG

Ms. ABZUG. Mr. Chairman, I offer amendments, and ask unanimous consent that they may be considered en bloc.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from New York?

There was no objection.

The Clerk read as follows:

Amendments offered by Ms. Abzug:

Page 75, line 17, strike out "the later" and insert in lieu thereof "any".

Page 75, strike out line 19 through line 22, and insert in lieu thereof the following;

"(1) in the case of an employee who begins his period of service on or after the date he attains the age of 24, the date on which he completes 1 year of service; or

"(2) in the case of an employee who begins his period of service before he attains the age of 24, the date on which he completes 3 years of service or the date on which he attains 25 years of age, whichever date is earlier."

Page 79, strike out line 9.

Page 79, line 10, strike out "(B)" and insert "(A)".

Page 79, line 13, strike out "(C)" and insert "(B)".

Page 79, line 15, strike out "(D)" and insert "(C)".

Page 79, line 17, strike out "(E)" and insert "(D)".

Page 79, line 21, strike out "(F)" and insert "(E)".

(Ms. Abzug asked and was given permission to revise and extend her remarks.)

Mr. DENT. Mr. Chairman, will the gentlewoman yield?

Ms. ABZUG. I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, I have discussed this matter with the gentlewoman from New York, and also with the ranking minority member of the committee, and I have no objection to the amendments, and we accept the amendments.

Mr. ERLENBORN. Mr. Chairman, will the gentlewoman yield?

Ms. ABZUG. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I think that it would be good for the record if we could have an explanation of the amendments, and I believe that after such an explanation I would be prepared to accept them.

Ms. ABZUG. I thank the gentleman from Illinois, and I will be glad to give an explanation of the amendments.

Mr. Chairman, under the legislation which is before us, eligibility for participation commences after the age of 25, plus 1 year of service. The amendments, which I am proposing, would allow coverage to begin at an age lower than 25 if the employee has worked for 3 years.

The facts are that, according to the 1970 census, over 50 percent of all Americans between the ages of 18 and 19 are in the labor force. Over 68 percent of all Americans between the ages of 20 and 24 are in the labor force. The amendments are of particular interest to women whose work pattern is to work for a number of years, generally starting between 18 and 24, then leave to fulfill their roles as wives and mothers, and then return to work.

From the same 1970 census we learn that of all the women between the ages of 20 and 24 over 56 percent are in the labor market.

Actually, what the amendments seek to do is to more equitably cover blue-collar workers in this country who do not wait until the age of 25 to start working, but who commence working right out of high school, and that is a reality of American life.

The amendment expands the rights of every working individual to receive a pension.

I believe it would be terribly unfair for the working youth and women in this country who make a significant contribution to society not to be considered as economic equals. It is for that reason that I urge the adoption of this amendment.

For the purposes of clarification I would like at this time to offer some examples of how this amendment would affect employees.

EXAMPLE 1

Assume that a 20-year-old starts working for a large company that maintains the minimum standards required by this bill. The plan has both employee and employer contributions. Let us also assume that this employee works for 10 years for the same company. The company is using the Alternative B, sliding scale plan. Under the current bill this employee would be entitled to 5 years of benefits vested at 25 percent after working 10 years.

Under this amendment, with the same set of circumstances, the employee would be eligible for 7 years of benefits vested at the 10-year level on the vesting schedule, or 50 percent.

It should be noted that the employee would have a nonforfeitable right to the share he or she contributes.

EXAMPLE 2

An employee at the age of 18 joins a company that requires the minimum standards of this bill and follows the sliding scale of vesting rights, Alternative B. This employee then leaves the company after 8 years at age 26. Under the current bill, the employee will get nothing.

Under the amendment this same employee would get 5 years of benefits, vested at 40 percent. This would not be possible until age 30 under the current bill and at age 30 the employee would be entitled to only 5 years of benefits, vested at 25 percent.

EXAMPLE 3

An employee at the age of 18 joins a company that follows the 10-year, 100 percent vesting alternative—Alternative A. Under the current bill that employee would get 100 percent of 10 years of benefits at age 35. This 10 years of benefits would come after working for the company 17 years.

Under the amendment, given the same set of circumstances, that employee would have 10 years of benefits, vested at 100 percent at age 31.

EXAMPLE 4

If an employee joins a company at age 18 which follows the sliding vesting schedule, and leaves at age 25, under the current bill that employee would have no benefits vested.

Under the amendment that employee would have 4 years of benefits vested at 35 percent.

I commend the gentleman from Pennsylvania for his work on this legislation and I thank him for accepting this amendment. I would also like to thank and commend the gentleman from Illinois (Mr. Erlenborn).

The adoption of this amendment will be an important advance for America's working youth and for America's working women.

Mr. BROWN of California. Mr. Chairman, will the gentlewoman yield?

Ms. ABZUG. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Chairman, I would like to commend the gentlewoman from New York (Ms. Abzug) in offering these amendments. As the gentlewoman points out, they do attempt to rectify provisions in the bill which, in my opinion, are obviously discriminatory. They discriminate against the young due to the age minimum of 25; against women because many women must leave the work force before reaching age 25 due to childbirth, and are, therefore, unable to receive any vesting or pension benefits; and against minorities because, although many must enter the labor force at an early age, due to conditions which do not allow them to continue their

education, they do not begin participating in a pension program until age 25.

There is an additional aspect of the bill which bothered me, because of the illogical provision that young people below the age of 25 could be covered under this bill if they were part of a private pension plan which allowed complete vesting after 3 years. In effect, that means that a certain very small proportion of the working force under 25 who were participants in such a plan could be permitted to acquire vesting, but the vast majority could not.

Congresswoman Abzug's amendments tend to rectify not only the discriminatory provisions of this act, but the illogical provision which would have allowed a certain very small proportion of the working force to be covered at the age of 22, but not the far larger proportion. I want to compliment the gentlewoman from New York for her wisdom in bringing these amendments to the floor, and hope they will be adopted.

(Mr. Brown of California asked and was given permission to revise and extend his remarks.)

(Ms. Abzug asked and was given permission to revise and extend her remarks.)

Mr. PICKLE. Mr. Chairman, the amendment by my colleague from New York (Ms. Abzug) is a worthy amendment, and I rise in support of it.

It recognizes that men and women under 25 years of age can still be a significant and vital part of our work force. Since the qualifications for this amendment stipulate that an employee must work for the firm for 3 years before becoming eligible, I do not think it would inflict any undue hardship on our businessmen, but it would also not discriminate against legitimate members of the work force just because they were young.

I think this amendment helps to strengthen this bill and to make it a better guide for pensions for all our citizens working in the private sector.

This amendment not only will have a special meaning to those men and women who enter the work force at an early age and stay there but also to those women who enter the work force and then choose to leave for several years because they have small children at home. Now those early years can count in an overall lifespan of contribution to the American work force.

I think this is right, and that this amendment should receive the strong support of this Congress.

Mr. ERLENBORN. Mr. Chairman, I move to strike the last word.

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, I have examined the amendments offered by the gentlewoman, and they have this effect. Under the bill presently there are two criteria for participation—and remember these are minimum standards; this is not a proscription as to what the plan administrators or those who are drafting the plan may do. They could make immediate vesting, immediate participation, if they so desired. These are just minimum standards we are talking about.

Under the bill the minimum standard for participating is age 25 plus 1 year of service. The gentlewoman's amendments would keep that test at age 25 plus 1 year of service, and have another alternative test which would have 3 years of service for one who had not yet attained age 25. This will allow some to participate as members of the pension fund at an earlier age than the bill originally would have.

There is a cost for earlier participation. I do not think the cost will be excessive. I think that we ought to understand the effect of this, however.

As an example, if a person is 18 when he begins his employment, under this rule at age 21 when he has completed 3 years of service in that employment, he will be eligible to participate. Under the most liberal of the 3 vesting standards—most liberal by most interpretations—the graded 5 to 15 year vesting, that person at age 21 will begin to participate, and 5 years later at age 26 will first become vested.

Under the graded vesting at age 26 when that person first becomes vested, that person is vested at 25 percent, not of his final pension, understand, but 25 percent of the years of service that he has as a participant. If the years of service were 5, 25 percent of that is 1¼ years. So, understand, the person after 8 years will get credit for 1¼ years of service.

Let us take the fairly typical plan that would give benefits in the amount of, say, $10 per month of benefits for each year of service. This person after 8 years would have 1¼ years of service to his or her credit and would be entitled at that point and would have a vested right in a $12.50-per-month pension. I want people to understand this because I think there is a vast misconception about what vesting is.

When many people hear of 50 percent vesting, they think that is 50 percent of the final pension. It is not that at all. The percent of vesting means the percent of years of service credited to the person at that time. So I thought that using this example, the Members might understand exactly the effect of these amendments. It will allow people at younger ages to get very small rights and it will not be any great thing. It may, because more people will be getting the small rights who are very likely to leave service and not draw those rights for another 30 years, let us say, when inflation will have chipped away at that $12.50 to the point where it means very little to them, have no very great effect toward helping these people, but it will cost the plan and therefore will cost the other participants in the plan, because whatever we take out of that plan for these individuals will not be available for those with long service to draw meaningful pensions, but with that understanding and explanation I have no objection to the gentlewoman's amendments.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, I agree with the recommendation of the gentleman from Illinois. There are other matters that deal with that area. I also agree with the gentleman that there will be an additional cost, but I believe it will be minimal, and I also accept the amendments.

The CHAIRMAN pro tempore (Mr. Fulton). The question is on the amendments offered by the gentlewoman from New York.

The amendments were agreed to.

AMENDMENT OFFERED BY MS. HOLTZMAN

Ms. HOLTZMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. Holtzman: Page 84, line 21, strike out "his earliest retirement age" and insert in lieu thereof the following: "the earliest age at which he acquired any nonforfeitable rights".

Page 86, line 11, strike out "of such spouse beyond the earliest age at which the participant could elect to receive retirement benefits" and insert in lieu thereof the following: "of the participant beyond the earliest age at which he acquired any non-forfeitable rights".

Mr. ERLENBORN. Mr. Chairman, will the gentlewoman yield?

Ms. HOLTZMAN. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, as far as I know at this point we have not been furnished a copy of this amendment. Is a copy available so we might have some idea of its effect?

Ms. HOLTZMAN. I am happy to supply the gentleman with a copy.

Mr. ERLENBORN. I thank the gentlewoman.

Ms. HOLTZMAN. Mr. Chairman, the purpose of my amendment is to protect the pension rights of surviving spouses. The committee bill has a major loophole that could leave many widows or widowers completely unprotected. Thus, under the committee bill, a widow may not receive any survivor's benefits if her husband dies before retirement age—even if his pension rights were fully vested. My amendment would correct this problem.

The problem of survivors' benefits is crucial. Few other areas of pension reform are more needful of action. Providing adequate survivors' benefits under private pension plans would help solve one of the most pressing needs of the over-65 population—the lack of income for older women. Women over 65 who live alone comprise the poorest segment of our population. Six out of every 10 have incomes below the poverty level.

Indeed, even the Education and Labor Committee recognized this when it stated in its report that the present law—which fails to protect such benefits—"can result in a hardship where an individual primarily dependent on his pension as a source of retirement income is unable to make adequate provision for his spouse's retirement years should he predecease her."

I believe that many of my colleagues have the impression that under the pending bill, once a worker's benefits have vested, his wife will be provided for in the event that he predeceases her. Certainly most workers will believe that under this new bill their accrued benefits will automatically go to their widows.

Such is not the case. Behind the technical language of the bill is a provision which permits pension plans to prevent a widow from receiving survivor's benefits unless her husband dies after he has reached

his retirement age. This means that a man who has worked for a company for 15 or 20 years, and whose pension benefits have become fully vested by the time he reaches the age of 45 or 50, had better remain alive for another 20 or 25 years if he wants his wife to receive her share of those vested benefits. If he dies even within 2 months of collecting his first pension check, she will get nothing. The same situation, of course, applies to surviving husbands.

This is a serious gap in the pending bill. It allows for a 20 to 25 year period after full vesting of an employee's benefits during which his wife is left unprotected in the event of his death. This is unconscionable, particularly because it is not apparent from the language of either the bill or the report which is supposed to explain the bill. I am afraid that it will be misleading to employees who will be lulled into a false sense of security in the belief that once their pension rights are vested, their wife will be secure regardless of what happens to them.

If pension plans are to be more than a gamble on survival and a bet on coverage, and if we sincerely want to protect the rights of the surviving spouse, then my amendment should be adopted.

Mr. ERLENBORN. Mr. Chairman, will the gentlewoman yield?

Ms. HOLTZMAN. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I thank the gentlewoman for yielding.

Let me ask the gentlewoman whether she knows if anyone appeared before the committee during their several years of extensive hearings to suggest this sort of amendment to the bill or if any such amendment was offered in the subcommittee or committee?

Ms. HOLTZMAN. It is my understanding that this matter had been discussed. How fully it had been discussed I cannot tell the gentleman.

This does appear to me to be a major failing in the bill; whether it was an oversight or a matter of deliberate intention, I do not know. But I think we do want to assure people covered by pension plans that their surviving spouses will be able to receive their vested benefits, even, or especially, if they should die untimely deaths.

Mr. ERLENBORN. Mr. Chairman, will the gentlewoman yield further?

Ms. HOLTZMAN. I would be delighted to yield to the gentleman.

Mr. ERLENBORN. If this were discussed in the committee, I am not aware of it; if it was brought up, I doubt that it would have taken much time of the committee to determine, because what this does, it converts the pension system into an insurance system that would be double, triple, or quadruple the costs of operating a private pension plan. If we did this by law for those already operating plans it would double, triple or quadruple their costs. We would probably bankrupt the plan.

I do not think the committee would have spent much time on it. It just changes the pension system into an insurance system. If a company wants to offer an insurance option, that is fine, which many do; they know what the cost is. Usually if they do that, there is a combination with a contribution by the company and by the employee.

This amendment would be so terribly expensive that it would completely destroy, in my opinion, the private pension systems.

Ms. HOLTZMAN. Mr. Chairman, I am surprised that the gentleman has not done any study of the claimed expense. The purpose of the committee bill was to increase the rights of the surviving spouse. The committee acknowledges in its report that it is terribly important to protect the right of the surviving spouse.

The problem here is that even though we have a worker who has fully vested rights in the plan, he has to live to a certain age to insure that his wife will be able to receive any benefits. I think the committee recognized the problem of the surviving spouse in general, but not in this specific instance.

Mr. DENT. Mr. Chairman, I rise to oppose the amendment.

I appreciate the Member's regard for the rights of the spouse.

Mr. O'NEILL. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the distinguished majority leader.

Mr. O'NEILL. Mr. Chairman, I would just like to comment that while it is very commendable to take care of the private pension plans, we have neglected the elimination of jobs because of base closings.

In October 1969, base closings affected 57,000 people. In March 1970, 69,000 lost their jobs.

In April 1973, over 42,000 were thrown out of work, of whom 8,000 were from my area—due to the closing of the Boston Naval Yard.

In February 1974, another base closed with 5,000 more jobs gone.

Now, a tremendous number of these people, knowing that this legislation was pending, have come into my office to ask if there is any way they could possibly be covered in the bill.

Under our pension plans, unless a worker has 25 years, or is over 65 years old, he is not eligible for a pension. But some of these people, working in the Boston Naval Yard or working for NASA, have 22 or 23 years of employment and are 45 or 46 years old. They lose their rights, just like people in private pensions.

Is there any way this could be remedied?

Mr. DENT. Mr. Chairman, to answer that, if they are working for a contract employer, they cannot under the act; but if they are working for an agency of Government they are not covered by the act.

Mr. O'NEILL. I am not talking about contract employees. I am talking about Government employees. They are subjected to the same problems as a person working in private industry.

Mr. DENT. I agree.

Mr. O'NEILL. The same thing happens to Federal employees who have worked 17 years in the Boston Naval Shipyard as has happened to employees of the Hood Rubber Co. who moved to North Carolina, who had 17 years service.

Mr. DENT. I understand what the gentleman is saying. We are only covering people who belong to private pension plans. The workers the gentleman is talking about do not belong to or participate in any private pension plan.

Mr. O'NEILL. At the present time they belong to Federal pension plans, just like the gentleman and I, and there is no protection.

Mr. DENT. The Post Office and Civil Service Committee may have that jurisdiction. We do not cover all the Federal pension plans in this legislation.

Mr. O'NEILL. Mr. Chairman, we are doing the right thing in taking care of those we can in this legislation. I should hope, however, that either the Committee on Post Office and Civil Service or the Armed Services Committee would take cognizance of the fact that there are many employees in pension plans which fall under their jurisdiction who need to be covered by legislation along the same lines as the Committee on Education and Labor bill provides for private pension members.

Mr. DENT. Mr. Chairman, I agree, and I appreciate the concern of the gentleman from Massachusetts. That is a concern we have already established a base for study upon, and our task force will study the peculiar problems of public pension plans, so that whatever information we get from our task force will be shared with all committees of interest in order that we might draft appropriate legislation.

Mr. Chairman, in joining with my colleague from Illinois in opposing the amendment before us, there was some discussion, but the discussion resolved around setting some kind of assurance that there would be payment of survival benefits. We established a base which set a date for survival before being made available at the earliest retirement age. Anything but that would give such an enormous cost that we could in many cases completely destroy the pension fund, because if one is to be given survivor benefits at any part of his vesting period, which is what the amendment does, there is no way that one can accumulate funds in a retirement pension fund without having a definite number of years to be completed.

So, when we compute the survivor benefits at the earliest retirement age, we know the actuarians have something to work with. I do not believe it is possible to even consider this amendment at this time.

Mr. ULLMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the purposes of the amendment are admirable, but what we have to do is put it in the proper context.

These are private and voluntary pension programs. If we impose this kind of requirement, all we are going to do is put a lot of private pension programs out of business. This would cost more than they could afford.

What we have tried to do is establish a balance, bring up the minimum pension requirements to the full extent possible without jeopardizing the existence of the private pension program and without discouraging the establishment of additional pension programs. If we impose the kind of high costs involved in this amendment on the private pension system, we will only discourage the development of

further private pension programs and put a lot of existing ones out of business.

Mr. Chairman, I commend the gentlewoman for her purpose, but this amendment cannot be accepted on this bill, in my judgment, without doing great disturbance to the Act.

Mr. Chairman, let me turn briefly to a point raised in the course of the debate 2 days ago. Mr. Young of Illinois inquired as to the relationship between the antidiscrimination provisions of present law and the minimum vesting provisions under the bill. It is expected that these minimum vesting standards will significantly reduce the need for the Internal Revenue Service to require faster vesting in order to meet the antidiscrimination requirements of the law. Nevertheless, where the antidiscrimination provisions require it, faster vesting will continue to be required. In order to clarify the legislative history on this matter, I would like at this point to read the paragraphs from pages 64 and 65 of the Ways and Means Committee report (H. Rept. 93–807) that describe the effect of the bill:

Discrimination.—Under present law, rapid vesting requirements are sometimes imposed on a plan in order to prevent discrimination. Your committee anticipates that the higher vesting standards provided in the bill will reduce the need to require faster vesting in order to achieve this purpose. On the other hand, there undoubtedly still will be cases where it will be necessary to require that the plan provide vesting over and above that required under the bill to prevent discrimination under a plan in favor of officers, shareholders, and highly compensated employees. Under the committee bill, the Internal Revenue Service is to require more rapid vesting (such as by requiring a greater portion of the accrued benefit to become vested or by requiring the benefit to accrue faster in order to minimize the possible discriminatory effects of "back loading") if it appears that there had been, or is likely to be forfeitures under the plan which have the effect of discriminating in favor of the officers, etc. For example, in a profit-sharing plan, such forfeitures could directly benefit the proscribed class of individuals. But in a defined benefit plan there could also be discrimination by reducing the cost to the employer of providing a disproportionate amount of benefits for executives. In other words, if most highly paid employees remain (or are likely to remain) on the job, while other employees tend to leave, the Internal Revenue Service could find a pattern of discrimination (whether or not it was the result of a deliberate policy of dismissing employees in order to prevent vesting) and could require more rapid vesting (for example, by adjusting the vesting schedule, the accrual rate, or both).

Also, present law is designed to ensure that in the event of early plan termination, the benefits under the plan are not paid to employees who are officers, shareholders, or highly compensated employees in a discriminatory manner. The committee bill contains a provision to make it clear that the vesting requirements under the bill are not intended to operate to overturn these rules. Thus, for example, in the event of an early plan termination, a highly compensated employee might receive less than his otherwise vested benefit under the bill, if this were necessary to prevent discrimination.

Finally, the bill includes a provision that allows persons other than banks to be trustees of Keogh plans. This would allow competition and, therefore, allow lower costs for these pension plans. However, it is important to ensure that the persons who become trustees of such plans will act responsibly and in accord with the rules governing fiduciary responsibility. It is also important that a person who acts as a trustee have the skill and expertise needed for this very important position.

I would like to read at this point from pages 133 to 134 of the committee report on H.R. 12855. While this explanation describes the criteria for nonbank trustees under individual retirement accounts, it is intended that the same criteria apply with respect to Keogh plans:

Under the governing instrument, the trustee of an individual retirement account generally is to be a bank (described in sec. 401(d)(1)). In addition, a person who is not a bank may be a trustee if he demonstrates to the satisfaction of the Secretary of the Treasury that the way in which he will administer the trust will be consistent with the requirements of the rules governing individual retirement accounts. It is contemplated that under this provision the Secretary of the Treasury generally will require evidence from applicants of their ability to act within accepted rules of fiduciary conduct with respect to the handling of other people's money; evidence of experience and competence with respect to accounting for the interests of a large number of participants, including calculating and allocating income earned and paying out distributions to participants and beneficiaries; and evidence of other activities normally associated with the handling of retirement funds. Additionally, your committee expects that the Secretary generally will give weight to evidence that an applicant is subject to Federal or State regulation with respect to its activities, where this regulation includes, e.g., suitable rules of fiduciary conduct.

It is anticipated that the Secretary probably will allow individuals to act as trustees for individual retirement accounts.

Although the bill generally requires that a trustee administer an individual retirement account trust, the bill also provides that a custodial account may be treated as a trust, and that a custodian may hold the account assets and administer the trust. Under the bill, a custodial account may be treated as a trust if the custodian is a bank (described in sec. 401(d)(1)) or other person, if he demonstrates to the satisfaction of the Secretary of the Treasury that the manner in which he will hold the assets will be consistent with the requirements governing individual retirement accounts. Again, it is contemplated that the Secretary will require substantial evidence (as described above) to determine if a person other than a bank may act as custodian.

Mr. ERLENBORN. Mr. Chairman, I rise in opposition to the amendment.

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, just very quickly, I am surprised that in a bill as complicated as this, as technical as this, where one provision interacts with another, that an amendment of this nature would be suggested without any prior warning, without any attempt to offer it in committee, without even a copy of the amendment being made available, at least on this side of the aisle.

Mr. Chairman, this is very close to writing a tax law; very complicated. It took the Committee on Ways and Means and the Committee on Education and Labor a number of years and months; years of hearings, months of markup.

If amendments of this nature were to be adopted on the floor without any prior warning, if any other amendments of this nature are offered without the two committees having an opportunity to see them ahead of time and examine them, examine them in committee when we can take the time to do so, we are going to destroy a very good effort to try to protect the working men and women in this country by the adoption of good pension legislation.

Ms. HOLTZMAN. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentlewoman from New York.

Ms. HOLTZMAN. Mr. Chairman, I thank the gentleman for yielding.

The reason the gentleman did not receive much prior warning concerning this amendment is that the final version of the bill was not made available until a few days ago, and it took me until virtually this morning to understand the deficiencies in the bill.

If it took me that long, what concerns me is that it is going to take the workers of this country even longer to discover the lack of coverage in this bill, and that is one of the reasons that my amendment is important.

This is an extremely technical bill. The deficiencies in it are not really clear to the Members, and I am afraid they will not be understood by the public.

Mr. ERLENBORN. Mr. Chairman, I understand the gentlewoman's concern, but what she really is talking about is turning the private pension system into an insurance system. We cannot afford to do that. We cannot afford to jeopardize the pensions the people are now relying on.

Let us not destroy this system in the name of trying to help people.

(Ms. Holtzman asked and was given permission to revise and extend her remarks.)

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentlewoman from New York (Ms. Holtzman).

The amendment was rejected.

Ms. ABZUG. Mr. Chairman, I move to strike the last word.

Mr. Chairman, for some months I have been deeply concerned with the need to insure that pension benefits are made available on a nondiscriminatory basis to all those who have earned them regardless of race, color, national origin, religion, or sex.

The chance to achieve economic security—based on merit—is the heart of the American dream; and where pension benefits are unfairly reduced or denied, the results are tragic for those who have earned a dignified retirement.

I had intended at this time to raise an amendment incorporating nondiscrimination based on race, color, national origin, religion, or sex into the basic requirements of the pending bill.

However, I understand that the distinguished Representative from Pennsylvania (Mr. Dent) is concerned that this approach runs counter to our actions last year in further consolidating equal employment jurisdiction in the Equal Employment Opportunity Commission.

Mr. DENT. The Representative is correct. Although I fully share your concern for full enforcement of nondiscrimination requirements affecting pension and profit-sharing plans, I believe that the thrust toward centralized administration of nondiscrimination in employment must be maintained. And I believe this can be done by the Equal Employment Opportunity Commission under terms of existing law.

Ms. ABZUG. Does the Representative agree that discrimination based on race, color, national origin, religion, or sex affecting participation

in pension or profit-sharing plans, is presently prohibited under section 703(a) of the Equal Employment Opportunity Act? That section provides, in part:

> It shall be an unlawful employment practice for an employer—
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin—

Mr. DENT. I agree with the Representative's reading of the statute and I understand that the courts are following this view. The leading cases are: *Rosen* v. *Public Service Commission*, 477 F. 2d 90 (3 Cir. 1973); *Bartmess* v. *Drewrys*, 444 F. 2d 1186 (7th Cir. 1971) Cert. Denied 404 U.S. 939; *Fillinger* v. *East Ohio Gas*, 4 FEP 73 (E.D. Ohio 1971).

Again, I share the concerns of the distinguished Representative from New York that the EEOC must view discrimination in pension plans as among the most serious forms of employment discrimination.

Ms. ABZUG. Mr. Chairman, in light of the Representative's views, and with the understanding that nondiscrimination in pension and profit-sharing plans is fully required under the Equal Employment Opportunity Act and of the pending bill, I deeply appreciate his judgment and his assistance.

Mr. GAYDOS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to direct an inquiry to the gentleman from Pennsylvania (Mr. Dent), the manager of this bill.

Section 111 contains standards for fiduciary responsibility and, for example, precludes transfer of a plan's property to "a party in interest" except for adequate consideration. In the case of collectively bargained plans established in an industry for the employees covered or working in that industry from time to time it is desirable for the overall benefit of the beneficiaries to transfer assets or funds from one plan to another because of existing circumstances. For example, a health and welfare fund or a supplemental unemployment benefit fund may wish to transfer assets to a retirement fund to enhance the actuarial soundness of the retirement fund. I want to be reassured that the provisions of the bill would not in any way preclude these collectively bargained plans from making such transfers.

Mr. DENT. Will the gentleman yield?

Mr. GAYDOS. I am happy to yield.

Mr. DENT. The bill in no way intended to apply to or restrict such transfers. Thus, the test of "adequate consideration" would not be applicable to such a transfer.

Mr. GAYDOS. Mr. Chairman, I include the following accurate record of cancelled pension agreements as computed by the United Steelworkers of America covering 1 year—(1973); 71 agreements were terminated during this 1-year period:

CANCELED COMPANIES WITH PENSION AGREEMENTS, 1973

[Prepared by Insurance, Pension and Unemployment Benefits Department, United Steelworkers of America]

Company and address	Local union No.	District	Plant location	Number of employees	Date agreement canceled
American Chain & Cable Co., Inc., 2250 Noblestown Rd., Pittsburgh, Pa. 15205	5468	20	Warehouse, Pittsburgh, Pa	[1] 9, [2] 2	Jan. 8, 1973
American Smelting & Refining Co., Selby Smelter & Refinery, Selby, Calif. 94584	51	37	Selby, Calif	7	May 11, 1973
American Standard, Inc., Tonawanda Iron Division, Westinghouse Air Brake Co., Sub., River Rd., Tonawanda, N.Y. 14120.	2758	4	North Tonawanda, N.Y	150	Oct. 25, 1973
Arwood Corp., 18383 Railroad St., City of Industry, Calif	2018		City of Industry, Calif	190	May 4, 1973
Boland & Cornelius, 1016 Marine Trust Bldg., Buffalo, N.Y. 14203	5000	4	Buffalo, N.Y	48	Dec. 19, 1973
Butcher & Hart Manufacturing Co., 4601 Cortland Ave., Altoona, Pa. 16601	5580	7	Altoona, Pa	75	Dec. 7, 1973
Cantrell Electric Co., Berkeley, Calif. 94701	1304	38	Berkeley, Calif	15	Aug. 24, 1973
Carrollton Manufacturing Co., Carrollton, Ohio	1571	27	Carrollton, Ohio	150	Apr. 27, 1973
Coats Patrons, Ltd. (Scotland), Crown Fastener Division, Coats J. & P. Ltd., Sub., Clarke (I.P.) & Co., Ltd., Sub., Coats & Clark, Inc., Sub., 30 Cutter St., Warren, R.I.	3895	1	Warren, R.I	460	Jan. 31, 1973
Colt Industries, Inc., Crucible Spaulding Operation, Crucible, Inc., Sub., 4 Gateway Center, Pittsburgh, Pa. 15222	1339	9	Harrison, N.J	183	May 8, 1973
Continental Can Co., Inc., 633 3d Ave., New York, N.Y. 10017:					
Plant 79: Customer service	6780	8	Baltimore, Md	59	May 3, 1973
Plant 47	4801	36	Auburndale, Fla	[1] 87	May 11, 1973
Plant 960: Conoplan plant	7715	36	Gretna, La	[2] 5	Do.
	5428	36	New Orleans, La	[1] 38	Jan. 18, 1973
	5033	36	do	7	Do.
Plant 89: Los Angeles Crown Plant	1981	38	Los Angeles, Calif	53	May 3, 1973
Crane Co., C.F. & I. Steel Corp., Sub., P.O. Box 316, Pueblo, Colo. 81002	2111	9	Trenton, N.J	[1] 154, [2] 1	May 17, 1973
	1069	38	San Francisco, Calif	139	Aug. 23, 1973
Crown Cork & Seal Co., Inc., 9300 Ashton Rd., Philadelphia, Pa	7305	36	Birmingham, Ala	1	Aug. 6, 1973
Cypress Gardens Citrus Products, Inc., Winter Haven, Fla. 33880	6991	36	Winter Haven, Fla	10	May 18, 1973
Dawe's Laboratories, Inc., Huron Biochemicals, Inc., Sub., 30 Buell St., Harbor Beach, Mich. 48441	7561	29	Harbor Beach, Mich	60	Apr. 10, 1973
Del Monte Properties Co., Wedron Silica Division, Sub., 400 Higgins Rd., Park Ridge, Ill. 66068	631	38	Pacific Grove, Calif	35	Oct. 26, 1973
Domtar, Ltd., Domtar Chemicals, Inc., Sub., Metals Powders Division, P.O. Box 486, Ridgway, Pa	7672	19	Ridgway, Pa	40	Mar. 28, 1973
Dresser Industries, Inc., Dresser Manufacturing Division, 12920 East Whittier Blvd., Whittier, Calif. 90602	4511	38	Whittier, Calif	50	Jan. 18, 1973
Ducane Heating Corp., Suite 100, 800 Dutch Square Blvd., Columbia, S.C. 29210	6293	9	Totwa, N.J	167	July 27, 1973
Fedders Corp., Climatrol Industries, Inc., Sub., Decatur, Ala	5381	36	Decatur, Ala	400	May 17, 1973
General Steel Industries, Inc., St. Louis Car Division, 8000 Hall St., St. Louis, Mo. 63147	1055, 7092	34	St. Louis, Mo	[1] 1,000, [2] 175	Aug. 13, 1973
General Tire & Rubber Co., ABC Scale Division, Aerojet Manufacturing Co., Sub., Morse (Robert), Ltd., Sub., Howe Richardson Scale Co., Sub., 113 St. Clair Ave. NE., Cleveland, Ohio.	3120	28	Willoughby, Ohio	12	Aug. 27, 1973
Gifford-Wood, Inc., Delaware Corp., 1 Hudson Ave., Hudson, N.Y. 12534	3487	4	Hudson, N.Y	80	July 5, 1973
Greif Bros. Corp., East Coast Division, Spotswood, N.J. 08884	6954	9	Spotswood, N.J	50	Aug. 9, 1973
Greif Bros. Corp., East Coast Division, Rahway, N.J. 07065	6954	9	Rahway, N.J	60	Do.
Greyhound Corp., Industrial Equipment Division, Armour & Co., Sub., Baldwin-Lima-Hamilton Corp., Sub., Eddystone, Pa.:					
Locomotive Division	2443	7	Eddystone, Pa	490	
Southwark Shop	1278	7	do	424	
O&T Unit	2844	7	do	[illegible]	May 25, 1973
Heppenstall Co. (Pa.) Heppenstall Co. Connecticut, Sub., Bridgeport, Conn	2651	1	Bridgeport, Pa		May 17, 1973
Hillman Co., Wilmington Securities, Inc., Sub., Marion Power Shovel Co., Inc., Sub., 2841 South 6th St., Ironton, Ohio 45638.	7880	23	Ironton, Ohio		July 27, [illegible]

Hon Industries, Inc., Corry Jamestown Corp., Sub., Ohio Chair Plant, Youngstown, Ohio	5223	26	Youngstown, Ohio		75	Mar. 19, 1973
Hyster Co., Lewis-Shepard Division, Watertown, Mass	5392	1	Watertown, Mass		280	Oct. 8, 1973
Illinois Central Industries, Inc., Amsco Division, Abex Corp., Sub., Two Harbors, Minn. 55616	7183	33	Two Harbors, Minn		76	Sept. 13, 1973
Illinois Central Industries, Inc., Railroad Products Group, Abex Corp., Sub., 1501 Macon St., North Kansas City, Mo.	1961	34	North Kansas City, Mo		55	May 9, 1973
Walter Kidde & Co., Inc., Weaver Division, Dura Corp., Sub., 2100 South 9th St., Springfield, Ill. 62703	1522	34	Springfield, Ill		500	Apr. 3, 1973
Lamson & Sessions Co., Angell Manufacturing Co., Sub., 546 Market St., Indianapolis, Ind	2969	30	Indianapolis, Ind		176	Feb. 16, 1973
Lennox Furnace Co., 400 North Midler Ave., Syracuse, N.Y	3775	4	Syracuse, N.Y		20	Jan. 31, 1973
Lowe's Cos., Inc., Pike's Peak Clay, Inc., Sub., 655 12th St., Macon, Ga. 31201	838	35	Plant: Macon, Ga		17	
			Mine: Pike's Peak, Ga		3	Feb. 27, 1973
Mannesmann A. G. (Germany), American Mannex Corp., Sub., Easton Metal Powder Co., Inc., Sub., 900 Line St., Easton, Pa.	5841	9	Easton, Pa		50	July 10, 1973
Moczik Tool & Die Co., Bad Axe, Mich. 48413	6311	29	Bad Axe, Mich		30	Apr. 3, 1973
N L Industries, Inc., Magnus Metal Division, 2234 West 43d St., Chicago, Ill. 60609	758	31	Chicago, Ill		50	July 12, 1973
NVF Co., Stainless Tube Division, Sharon Steel Corp., Sub., Union Steel Corp., Sub., Piscataway, N.J. 08854	5626	9	Township of Piscataway (New Market) Middlesex County.		121	Apr. 3, 1973
National Castings Co., Standard Pipe Protection Division, General Steel Industries, Sub., Girard, Ohio	3793	26	Girard, Ohio		50	Mar. 14, 1973
New Jersey Rolling Mills, Inc., 55 Passaic Ave., Kearny, N.J. 07032	4526	9	Kearny, N.J		190	May 29, 1973
New York Central Iron Works, Inc., Hagerstown, Md	3847	8	Hagerstown, Md		50	Mar. 2, 1973
Norris Industries, Inc., Fire & Safety Equipment Division, 1415 E. Bowman St., Wooster, Ohio	6446	27	Wooster, Ohio		16	Apr. 10, 1973
Ogden Corp., International Terminal Operating Co., Sub., 2 Broadway, New York, N.Y	4808	4	Lackawanna, N.Y		100	Feb. 2, 1973
H. K. Porter Co., Inc., Refractories Division, Bessemer Works, Bessemer, Ala. 35020	481	36	Bessemer, Ala		43	June 14, 1973
Republic Steel Corp., Republic Bldg., Cleveland, Ohio 44101	1297	29	Warehouse; Detroit, Mich		9	July 23, 1973
Republic Steel Corp., Lake Fleet Division—Unlicensed Seamen, Ore Vessels, 55 Public Sq., Cleveland, Ohio 44113	5000	4	Detroit, Mich		97	July 17, 1973
Reynolds Metals Co., Reduction Plant, Troutdale, Oreg. 97060	330	38	Troutdale, Oreg		542	Jan. 19, 1973
Riley Co., Cornwells Height, Pa. 19020	2954, 5586	7	Cornwells Heights, Pa		600, [2] 57	Mar. 15, 1973
Roco Manser (Pa.) Inc., Water St., Temple, Pa	5448	7	Temple, Pa		20	Aug. 2, 1973
S W Industries, Inc., Columbia Precision Corp., Sub., Greer Industries, Inc., Sub., Main & Eames St., Wilmington, Mass. 01887.	3962	1	Wilmington, Mass		90	Oct. 8, 1973
San Gabriel Valley Water Co., Fontana Water Co. Division, 8440 Nuevo, Fontana, Calif	5632	38	Fontana, Calif		15	May 4, 1973
A. O. Smith Corp. of Texas, Box 9726, Houston, Tex	4446	37	Houston, Tex	356	356	May 11, 1973
Spang & Co., Ferroslag Division, 143 Etna St., Butler, Pa. 16001	7330	15	Homestead Works; Homestead, Pa.		51	Apr. 7, 1973
Staveley Machine Tools, Inc., Lapointe Machine Tool Co., Sub., Tower St., Hudson, Mass	3536	1	Hudson, Mass		[1] 18, [3] 2	Dec. 27, 1973
Swedish Ball Bearing Co. (Sweden), SKF Industries, Inc., Sub., Box 9097, Asheville, N.C	7180	35	Asheville, N.C		105	Aug. 29, 1973
Textron, Inc., Fanner Manufacturing Co., Division, Munray Products Division, 12400 Crossburn Ave., Cleveland, Ohio.	6517	28	Cleveland, Ohio		49	Feb. 13, 1973
Trumbull Asphalt Co., 120 Waterfront Rd., Martinez, Calif. 94553	1440	38	Martinez, Calif		11	May 11, 1973
U.S. Gypsum Co., Wallace Manufacturing Co., Division, 911 East Jefferson, Pittsburg, Kans. 66762	6569	34	Pittsburg, Kans		170	Nov. 16, 1973
U.S. Philips Trust Cryogenic Division, North American Philips Corp., Sub., Ashton, R.I	5780	1	Ashton, R.I		50	Mar. 15, 1973
United States Steel Corp., American Bridge Division, 600 Grant St., Pittsburgh, Pa. 15230	7637	20	Ambridge, Pa		[3] 310	June 8, 1963
United States Steel Corp., Pittsburgh Warehouse, 600 Grant St., Pittsburgh, Pa. 15230	1924	20	Warehouse: Pittsburgh, Pa		15	May 29, 1973
United States Steel Corp., Raw Materials & Shipping Operations, Eastern Limestone Operations, 600 Grant St., Pittsburgh, Pa. 15230.	4251	20	Hillsville, Pa		100	Jan. 3, 1973
Vulcan Materials Co., Metal Division, P.O. Box 720, Sandusky, Ohio 44870	914	9	Newark, N.J		8	Dec. 18, 1973
Warren Slag Co., 30 East Broad St., Columbus, Ohio	1375	26	Warren, Ohio		31	Sept. 19, 1973
Western Pipe & Tube Co., Inc., 1100 East Northern Ave., Pueblo, Colo. 80116	4829	38	Pueblo, Colo		14	July 5, 1973
White Consolidated Industries, Inc., One Oliver Plaza, Pittsburgh, Pa. 15222	2124	20	Lewis Works, Groveton, Pa		[1] 166	Apr. 4, 1973
White Consolidated Industries, Inc., Blaw-Knox Foundry & Mill Machinery, Inc., Sub., One Oliver Plaza, Pittsburgh, Pa.	7496	20	Lewis Works, Groveton, Pa		[3] 16	Do.
Youngstown Hard Chrome Plating & Grinding, Inc., 8451 Southern Blvd., Youngstown, Ohio 44512	7755	26	Youngstown, Ohio		21	Oct. 25, 1973
Zenith Laboratories, Inc., Mexico Forge, Inc., Sub., Reedsville, Pa	6423	7	Reedsville, Pa		60	Feb. 28, 1973

[1] P. & M.

[3] O. & T.

The CHAIRMAN pro tempore. If there are no further amendments to part 2, the Clerk will read.

The Clerk read as follows:

* * * * *

[The text of part 3 of H.R. 12906 appears on pp. 2858–2873.]

Mr. DENT (during the reading). Mr. Chairman, I ask unanimous consent that part 3 be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AMENDMENT OFFERED BY MR. DENT

Mr. DENT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DENT: Page 75 at line 2, strike "of 1954" replace with the following: "or 1954;or

"(7) such plan is established and maintained by a labor organization described in section 501(c)(5) of the Internal Revenue Code and such plan does not at any time after the date of enactment of this Act provide for employer contributions."

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. Dent).

The amendment was agreed to.

Mr. ERLENBORN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, we are now going into the funding section; we have completed the vesting section. Because those two sections have similar if not identical language in title II, which we will consider later, but which will not be subject to amendment, I would like to ask the gentleman from Pennsylvania (Mr. Dent) whether my understanding is correct that in the agreement between the gentleman from Pennsylvania (Mr. Dent) and the acting chairman of the Committee on Ways and Means, the gentleman from Oregon (Mr. Ullman), that joint regulations will be adopted by the Department of Labor and the Treasury Department for the administration of participation in vesting and funding, and that although the two departments will be administering in this area they will be using the identical regulations for such administration; is that correct?

Mr. DENT. The gentleman is correct.

Mr. ERLENBORN. Mr. Chairman, let me also ask, in any case in which the bill provides that the regulations by the Secretary of the Treasury are effective after December 31, 1975, only if approved by the Secretary of Labor, the action of the Secretary of Labor would in approving such regulations constitute "agency action" within the meaning of the administrative procedure provisions of title 5, United States Code, and would thus be subject to the rulemaking requirements of section 553 of that title.

As a result, the Secretary would be required to publish notice of his proposed action in the Federal Register, and to afford interested persons an opportunity to comment on the Treasury regulations which he proposes to approve.

In addition, it is my understanding that it is the intention of our committee that the Secretary of Labor not approve any Treasury regulation which is inconsistent with the regulations of the Department of Labor under the bill, or with the Labor Department's administrative practice in carrying out its functions under the bill.

Is that correct?

Mr. DENT. Yes; I agree that that is correct, and it is the understanding between the gentleman from Oregon (Mr. Ullman) and myself, and our staff members, that that is exactly correct.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman from Pennsylvania.

The CHAIRMAN pro tempore. Are there further amendments to part 3?

If not, the Clerk will read.

The Clerk read as follows:

* * * * *

[The text of part 4 of H.R. 12906 appears on pp. 2873–2904.]

Mr. DENT (during the reading). Mr. Chairman, I ask unanimous consent that part 4 be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AMENDMENT OFFERED BY MR. ERLENBORN

Mr. ERLENBORN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Erlenborn: Page 113, strike out line 6 and all that follows down through line 22 on such page and insert in lieu thereof the following:

SEC. 401. (a) ESTABLISHMENT.—There is hereby established a government corporation to be known as the Pension Benefit Insurance Corporation (hereinafter in this part referred to as the "Corporation").

(b) BOARD OF DIRECTORS.—(1) The Corporation shall have a board of directors which, subject to the provisions of this part, shall determine the policies which shall govern the operations of the Corporation. The board shall consist of nine individuals who are citizens of the United States. One director shall be appointed by the Secretary from among officers and employees of the Department of Labor, shall serve at the pleasure of the Secretary, and shall serve as chairman of the board. The remaining directors shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall have the following qualifications:

(A) Three shall have had experience serving with employers in the administration or maintenance of private pension plans, one of whom shall be from the multiemployer pension plan field.

(B) Three shall have had experience serving with labor organizations in the administration or maintenance of private pension plans, one of whom shall be from the multiemployer pension plan field.

(C) Two shall be representative of the general public, and shall have had experience in the administration or maintenance of private pension plans.

(2) The term of office of a director (other than a director appointed by the Secretary of Labor) shall be six years; except that—

(A) of the directors first appointed, two shall hold office for a term which expires two years after the date of the enactment of this Act, three shall hold office for a term which expires four years after such date, and three shall hold office for a term which expires six years after such date, as designated by the President of the United States at the time of their appointment, and

(B) any director appointed to fill a vacancy shall hold office for the remainder of the unexpired term.

(3) (A) Except as provided in subparagraph (B), members of the board of directors shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the board.

(B) Members of the board who are full time officers or employees of the United States shall receive no additional pay on account of their service on the board.

(C) While away from their homes or regular places of business in the performance of services for the Corporation, members of the board shall be allowed travel expenses, including per diem in lieu of subsistence in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

Page 113, insert after line 25, the following:

(d) Advisory Board.—(1) The Corporation shall have an advisory board which shall consist of seven members to be appointed (for terms fixed by the board of directors) in the following manner: One shall have had experience in the insurance industry, one shall have had experience serving in the corporate trust field, one shall be a qualified public accountant (as defined in section 104(a)(3)(C) of this Act), one shall be an enrolled actuary (as defined in section 104(a)(4)(C) of this Act.), one shall have had experience in the investment management field, and two shall have had experience in the technical aspect relating to private pension plans. All members shall be appointed by the board of directors from among persons recommended by organizations in the respective fields of which at least three shall be recommended by labor organizations.

(2) It shall be the duty of the advisory board to advise the board of directors with respect to the carrying out of the function of the board of directors under this part, and to submit to the board of directors recommendations with respect thereto. The advisory board shall meet at such times as requested by the board of directors, and shall be compensated as provided in bylaws of the Corporation.

Page 121, strike out line 1 and all that follows down through line 20 on page 122, and insert in lieu thereof the following:

(3) Value of assets.—The Corporation shall adopt rules relating to the valuation of a plan's assets for premium purposes. The Corporation shall adopt such rules after considering recommendations of the advisory board and recommendations made by actuarial organizations and other interested parties. Such rules adopted by the Corporation shall require that assets for a plan be valued on a reasonable and consistent basis which will result in equitable treatment as between plans in similar circumstances.

(4) Present value of insured benefits.—The Corporation shall adopt rules relating to the valuation of a plan's insured benefits for premium purposes. The Corporation shall adopt such rules after considering recommendations of the advisory board and recommendations made by actuarial organizations and other interested parties. The Corporation shall take into account that under this title a complete actuarial valuation of a plan's liabilities is required at least every three years, and should set standards for acceptable approximation methods to be used for interim years.

Page 122, line 1, strike out "(6)" and insert in lieu thereof "(5)".

Page 123, line 3, strike out "(7)" and insert in lieu thereof "(6)".

Page 123, line 7, strike out "(8)" and insert in lieu thereof "(7)".

Page 126, line 12, strike out "(5)" and insert in lieu thereof "(3)".

Page 126, line 14, strike out "(6)" and insert in lieu thereof "(4)".

Page 141, strike out line 6 and all that follows down through line 3 on page 143, and insert in lieu thereof the following:

Sec. 414. (a)(1) Except as provided in paragraph (2) and (3), this section applies in the case of any complete or partial plan termination—

(A) of a plan insured under this part, and

(B) which gives rise to (i) an assumption of the assets of such plan by the corporation under section 411(c)(i), or (ii) the appointment of a receiver under section 411(c)(2), or (iii) an alternative method of compliance under section 411(c)(4).

(2) This section shall not apply in the case of—

(A) a partial termination, if all nonforfeitable benefits of participants and beneficiaries to which the partial termination applies continue as obligations of the plan, or

(B) a partial or complete plan termination to the extent of any liability arising out of the insolvency of an insurance company which was licensed under the laws of a State to do business with the plan.

(3) An employer shall not be required to make any payment with respect to any liability under this section at any time at which he is insolvent (determined under section 1(19) of the Bankruptcy Act but without regard to liability under this section).

(b) Except as provided in subsection (d), in the case of a plan termination to which this section applies, if on the date of termination of the plan all nonforfeitable benefits of all participants under the plan were accrued by reason of service with one employer, such employer shall be liable to the Corporation only for the following amounts:

(1)(A) If the Corporation assumes the assets of the plan under section 411(c)(1) of this Act, the employer shall be liable for an amount equal to the lesser of—

(i) 50 percent of the net worth of the employer, or

(ii) the amount by which the present value of insured benefits required to be distributed under section 409 to participants and beneficiaries exceeds that part of the current value of the assets of the plan allocable to such insured benefits according to section 415.

Valuation of employer net worth, plan liabilities, and plan assets shall be made as of the date of termination of the plan or as of such other date as may be designated by the Secretary pursuant to section 411(c)(4). Net worth shall be determined in accordance with rules of the Corporation (which shall reflect generally recognized accounting principles).

(B) An employer may elect to pay his liability under this paragraph in annual installments equal in each year to the amount determined under subparagraph (A) divided by the present value of an annuity certain, using a fifteen-year-payment period and the interest rate used to compute present value of benefits under subparagraph (A)(ii). The Corporation may permit the employer to make such other arrangements for deferred payment on such terms and for such periods as the Corporation deems equitable and appropriate.

(2) If the Secretary appoints a receiver under section 411(c)(2), the employer shall be liable to pay in each year beginning after termination of the plan an amount equal to the lesser of—

(A) the amount of the minimum contribution the employer would have been required to make under section 302 with respect to nonforfeitable benefits for such year had the plan not been terminated (assuming no increase in nonforfeitable benefits after termination of the plan), or

(B) the aggregate amount which would have been required to be charged under section 302(b)(2)(B) (less any amount credited under section 302(b)-(3)(B) for such year with respect to nonforfeitable benefits (assuming that the present value of such benefits is fixed as of the date of termination).

(3) The employer shall be liable for amount which is specified under an alternative method of compliance approved according to a proceeding under section 411(c) (4), if—

(A) the employer agrees to pay such amount, or

(B) the present value of such amount does not exceed the amount determined under paragraph (1)(A).

Page 143, line 4, strike out "(2)" and insert in lieu thereof "(c)".

Page 143, insert after line 6 the following:

(d)(1) Except as otherwise provided in paragraph (2), in the case of a termination to which this section applies of a plan which has elected coverage under the Single Employer Optional Trust Fund, an employer who employed a participant under such plan shall be liable to the corporation under subsection (b) by reason of termination of such plan only if the termination did not

occur because of substantial economic losses of the employer which would tend to lead to insolvency or bankruptcy (defined in rules prescribed by the Corporation and approved by the Secretary).

(2) If during the fifteen-year period following the date of such termination, the employer (A) maintains a pension plan which covers any participant who is covered by the terminated plan, (B) establishes an employee benefit plan which covers any participant who is covered by the terminated plan, or (C) increases benefits by reason of a plan amendment under an employee benefit plan which covers any participant who is covered by the terminated plan, then the employer shall be liable for the remainder of such fifteen-year period for an amount equal to the amount which he would have been obligated to pay (but for paragraph (1) of this subsection) during such period (determinated in the case to which subsection (b)(1) applies as if the employer had made the election referred to in subsection (b)(1)(B)). If a proceeding for reorganization is commenced under chapter 10 or 11 of the Bankruptcy Act with respect to an employer, such employer shall not be subject to any liability under this paragraph.

Page 143, line 7, strike out "(f)" and insert in lieu thereof "(e)".

Page 143, insert after line 16 the following:

"(f) CORPORATION TO HAVE STATUS OF GENERAL CREDITOR.—The Corporation shall have the status of a general creditor with respect to the liability of the employer under this section except that other general creditors whose claims accrued prior to the date of termination of the plan shall have preference over any claims made pursuant to the terms of this part."

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be printed in the Record.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Illinois.

There was no objection.

Mr. ANDERSON of Illinois. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN pro tempore. The Chair will count. Evidently a quorum is not present. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 52]

Baker	Frelinghuysen	Moss
Blatnik	Gettys	Murphy, N.Y.
Boggs	Gray	Nichols
Boland	Green, Oreg.	Powell, Ohio
Brasco	Hansen, Wash.	Rees
Brown, Mich.	Hébert	Reid
Broyhill, N.C.	Ichord	Roberts
Burton	Jones, Tenn.	Rooney, N.Y.
Camp	Karth	Rostenkowski
Carey, N.Y.	Kemp	Satterfield
Carney, Ohio	Kluczynski	Sikes
Crane	Mailliard	Sisk
Davis, Ga.	Martin, Nebr.	Stanton, James V.
Davis, Wis.	Michel	Stephens
Dingell	Mills	Stokes
Esch	Mitchell, Md.	Stuckey
Foley	Moorhead, Pa.	Sullivan

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Fulton, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 2, and finding itself without a quorum, he had directed the Members to record their pres-

ence by electronic device, whereupon 380 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN pro tempore. When the point of order was made, the amendment of the gentleman from Illinois (Mr. Erlenborn) had been considered as read and printed in the Record.

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, the amendment that I have just offered and which has been considered as read was submitted to Chairman Ullman and Chairman Dent a few days ago, so that I know they have had an opportunity to see the amendment. I think there has also been a good deal of discussion among Members generally, because I am advised that many lobbyists on both sides of the question have been contacting them.

Mr. Chairman, the amendment I have offered does several things, the most important of which is to change the character of the board that would operate the termination insurance corporation. In the bill as it was reported by our committee, the corporation is established within the Department of Labor. The Secretary of Labor and two of his employees would constitute the board to operate the pension insurance corporation.

Mr. Chairman, the amendment I have offered I think is quite reasonable. I think it is in line with decisions the Congress has made in the past for the governing bodies of similar institutions. My amendment would provide for a nine-member board; three representing employees, three representing employers, the Secretary of Labor, who would be the chairman of the board. The other two would be representatives of the general public.

This gives us a nine-member board, of which the Secretary of Labor would be chairman of the board. I think it is important that there be that tie between the corporation and the Department of Labor. Decisions made by either the insurance corporation or by the Department of Labor under funding standards, and so forth, would have an interaction one on the other.

So, I want to maintain that close relationship between the corporation and the Department of Labor, but I think it is totally unwise to put the entire decisionmaking in the hands of a political appointee; namely, the Secretary of Labor.

Mr. Chairman, at a time in history when so many have argued that the Presidency has gotten too much power, that the President has taken unto himself too much power, I think it would be totally unreasonable for us to create a corporation such as this and give to an appointee of the President the sole power of deciding what to do with this insurance corporation.

Under the concept of the committee bill, it is my understanding that assets acquired by the insurance corporation would most likely be liquidated; liquidated immediately or soon after their acquisition. This would be very poor management. The new corporation would become the owner of the assets of a defunct pension trust, of stocks,

bonds, investments in the private security market which would be then in the ownership of the insurance corporation.

It is not unreasonable to anticipate that after a few years of operation, a few of those large pension plans might terminate and the assets be taken over by the insurance corporation. The Secretary of Labor, if he were managing the corporation, would have several billion dollars of assets in that corporation. Now, if he were forced to liquidate those assets upon acquiring them, it would probably be at a time when the market was depressed, that is, when the company probably would be defunct and the pension plan would terminate.

If he was forced to liquidate at that time, he would not realize from those assets what he should realize. So forcing the insurance corporation to liquidate assets would be a very bad thing from the standpoint of management.

If the Secretary were to manage them, invest, reinvest, and do those things that would be equivalent to wise management, we would find a political appointee making decisions as to the sale or purchase of assets in the private market.

It could have a great impact on that private market.

Mr. Chairman, my amendment would establish the principle that the assets should be managed free from the political decisionmaking of the Secretary of Labor. It would be done under the determinations of this board, which has on it representatives of labor, management, Government, and the general public.

I think that this is a reasonable approach, to see that when this pension insurance corporation is established, it is managed in the proper fashion. I see no reason for this Congress, particularly at this point in history, to invest in the Secretary of Labor and, therefore, tangentially in the President the right to make these decisions, decisions that could drastically affect the private securities market.

Mr. Chairman, I hope that my amendment will be adopted. If it is, I think the bill will be vastly improved.

The CHAIRMAN pro tempore. The time of the gentleman from Illinois (Mr. Erlenborn) has expired.

(On request of Mr. Anderson of Illinois and by unanimous consent, Mr. Erlenborn was allowed to proceed for 2 additional minutes.)

Mr. ANDERSON of Illinois. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Illinois.

(Mr. Anderson of Illinois asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON of Illinois. Mr. Chairman. I just want to take this opportunity to commend the distinguished gentleman from Illinois and point out the fact that I think he has undertaken to amass a degree of knowledge that is unsurpassed by any Member in this Chamber in what is in all probability one of the most complex subjects to come before this body.

I think the gentleman has demonstrated in the debate thus far and in his explanation of this amendment that he is possessed of the kind of expertise that is needed to advise and consult with Members of this body on this legislation.

I support the gentleman in the amendment he has just offered. It seems to me that, as he has said, to restructure this board along lines so that both labor and management, as well as the public, are all three

represented in the very important business of administering this pension reinsurance fund is not a radical proposal. It is one that is, rather, designed to do equity to all of the parties involved and the general public as well.

Mr. Chairman, I applaud the gentleman for making what I think is a very constructive amendment to the bill, and one which I certainly hope will be adopted.

Mr. Chairman, I rise in support of the amendment offered by my friend and colleague from Illinois (Mr. Erlenborn). Under the substitute bill now before us, specifically, part 4 of H.R. 12906, a pension benefit guaranty corporation is established administered by the Secretary of Labor, with a board of directors consisting of the Secretary and two officers or employees of his department. The purpose of the corporation is to insure participants and beneficiaries of covered plans against losses resulting from partial or complete plan termination. This is done through the creation of two insurance funds, one for single-employer plans and the other for multiemployer plans. At the option of the Secretary, a third fund may be established for those plans wishing to pay a higher premium in return for no employer liability for lost benefits due to plan termination.

Under this provision, all plans with 26 or more participants would be required to join the corporation. All vested benefits of participants would be insured at up to $20 a month times the years of service, though full payment of the maximum is not guaranteed if the plan at the time of termination has not been a member of the corporation for at least 5 years. The premium payments would be set by the Secretary but could not exceed 0.1 percent of the amount by which the present value of the plan's vested benefits exceed the value of the plan's assets. In the event of termination, the total amount of insurance to be paid would be the difference between the plan's assets and its unfunded vested liabilities owed at the time of termination. If employers are not insolvent at the time the plan is terminated, they may be required to reimburse the fund for 100 percent of the insurance payment, up to 50 percent of their net worth. There would, of course, be no such liability if the employer had chosen to pay a higher premium into the optional insurance fund.

The amendment offered by my colleague from Illinois is aimed at correcting some of the deficiencies in the structure of the proposed corporation and at establishing certain safeguards against potential abuses of the termination insurance program; in short, a more workable plan which will not discourage the creation of new pension plans or the improvement of existing plans. For one thing, the Erlenborn alternative would restructure the board of directors of the corporation. Rather than consisting of three Labor Department representatives, the board would consist of nine members, three representing labor, three representing management, two representing the general public—all appointed by the President with the advice and consent of the Senate. The ninth member, who would serve as chairman, would be the Secretary of Labor. The reason for this restructuring is most sound and rationale in my opinion. The existing bill, in my opinion, would concentrate too much power in the hands of political appointees who are not in a position to responsibly serve the best interests of partici-

pants. In addition, this three-man labor board would be in a position to make investment decisions involving billions of dollars in the private sector. The Erlenborn alternative, on the other hand, would be more representative of the interests of the participants, and, I think, this should be the primary interest of such a board.

The Erlenborn amendment would also protect against abuse of the optional account in the present bill which allows an employer to escape all liability in the event of a plan termination. As my colleague has pointed out, employers will be tempted by this provision to take the higher premium, terminate the plan, even though not forced to, and thus dump all liability on the corporation. The Erlenborn amendment proposes a modified employer liability provision to insure against such abuses. Under this amendment an employer paying the higher premium could not escape all liability for termination if he continues in business and has no valid reason, such as substantial economic loss, for terminating his plan.

In addition, the Erlenborn alternative would allow for alternatives to having the corporation liquidate the assets of a terminated plan if the Secretary does not invest in the private sector. Under the alternative, a receiver or trustee could be appointed to administer the plan, or, the corporation could assume the assets and liabilities of the plan and manage these as part of the total assets of the corporation.

Mr. Chairman, I urge adoption of the Erlenborn amendment, I think it offers a more reasonable, representative, and workable approach to the complex issue of termination insurance.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman.

Mr. CHAMBERLAIN. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Michigan.

(Mr. Chamberlain asked and was given permission to revise and extend his remarks.)

Mr. CHAMBERLAIN. Mr. Chairman, I would also like to join in commending the gentleman from Illinois for offering this amendment. I think it makes good sense, and I urge its adoption.

Mr. Chairman, I wish to associate myself with those who believe that we can provide a stronger and more effective pension plan system by adopting the great majority of the provisions in this legislation. It is encouraging to realize that the years of work and effort by both the Education and Labor Committee and the Ways and Means Committee are about to receive approval. This is clearly the most important, most comprehensive proposal the Congress has ever considered in the area of pension plan legislation.

While H.R. 12906 adheres to the primary objective of improving private pension plan operation to insure their continued growth to retirement security and protection of promised benefits, there is one area—plan termination insurance—where further improvement is needed. In recognition of this real need, I support and urge the adoption of the Erlenborn amendment which provides the needed change in the termination insurance program outlines in H.R. 12906.

The Erlenborn amendment calls for a balanced board of directors of the nonprofit insurance corporation, with equal representation from employers and union groups, plus the general public and the Department of Labor. It recognizes the fact that a workable plan must in-

clude active, informed and professional board members who have been directly involved with and understand the problems of the private pension plan system.

I believe the Erlenborn amendment would tend to avoid the kind of excessive regulation that would jeopardize the growth and contribution of pension plans. A balanced board with the power to promulgate bylaws affecting all plans will insure that there will be a continuing full review of the need for additional regulation with full and complete recognition of the impact on private plans.

For these reasons I urge the adoption of the Erlenborn amendment.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for his remarks.

In the time remaining to me, let me make one additional point. There is another part of this amendment, one that would change the employer liability and the optional account that is provided in the committee bill.

The committee bill would allow the insurance corporation to set up a second optional account, with a higher premium, that would allow the employer to avoid employer liability completely.

The CHAIRMAN pro tempore. The time of the gentleman from Illinois (Mr. Erlenborn) has expired.

(By unanimous consent, Mr. Erlenborn was allowed to proceed for 1 additional minute.)

Mr. ERLENBORN. Mr. Chairman, as much as I abhor employer liability, I do realize that if we allow the employer to make a decision which is not even based on economic necessity to terminate his pension plan and throw all of the obligations on the insurance trust, we are just inviting employers to dump their liabilities onto the insurance corporation.

Part of my amendment provides a modified employer liability—at least some safeguard that the employer would not do this. It would require two things; namely, that there be an economic reason for his terminating his pension plan and, second, if he did, then he could not turn around the next day and start a new one. In other words, he could not get rid of his old liabilities and turn around and start a new one.

I think it is terribly important so that we will avoid employers dumping their liabilities on this corporation which would then cause other employers and, more importantly, employees to pay what an unconscionable employer should have paid to his employees.

Mr. Chairman, I hope my amendment will be supported.

Mr. DENT. Mr. Chairman, I rise in opposition to the amendment.

(Mr. Dent asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Chairman, I think it ought to be made clear at this point that we are not dealing with anything in this amendment except the makeup of the governing board. Actually we do have the optional accounts plan in our bill as it stands now. Employers do have all of the liability unless the board itself establishes that they may, because of the nature of their plan, its soundness and its funding and other provisions, apply a lesser rate to an optional plan whereby the liability

would shift to the new agency or corporation. The only difference is whether or not this House wants to create, in an area where a great deal more must be learned, especially in the field of the insuring part of this legislation—a permanent expanding type of bureaucracy. It is just that simple.

Mr. Chairman, the experience I have had personally with the agency created on the black lung situation was this: This was supposed to be a limited time agency. The Federal Government after January 1 had no more responsibility insofar as paying out or seeing to any of the benefits under black lung. Only the residual applications were being processed.

When I tried to strike that out with an amendment and had the bill up before us—and the whole department itself was involved and represented there by their top men—I showed them that within 6 months, they were removing the Federal Government from any responsibility or any activity in the field of black lung, because it reverted back to the State on January 1. Why, they got Presidential permission to say that they did not want that amendment which struck this agency out of existence.

I do not know—and I am sure my colleagues understand this, because we have talked about it in our committee. The subcommittee and the full committee rejected this amendment strictly on the ground that we do not know for sure where we are going and to what extent this agency is going to participate in deliberations of any kind that might require an independent, as he calls it, public corporation made up of nine men.

The argument is made that it is political for the Secretary of Labor. The President picked him, and I think you will notice he did not pick him politically. If the President picks eight of these men who are confirmed by the Senate, it does not give the House any handle on this situation. I am not about to say this House believes that the other body will not be looking into these qualifications to find out just what type of men we are putting on the board.

This is not a board but is really a permanent bureaucracy. These 9 men will stretch to 99 and then to 900 men, and if it works like all the rest of them, it will mushroom itself to way over that number. They started with 18 men in the one that I was just talking about, and it ended up with over 300-and-some scattered all over the United States.

I believe we have to have experience. I have agreed with the gentleman and I have agreed with the ranking member on part of their study which we are going to continue with their cooperation, and with the hard-working task force we have saved over $113,000 out of the $210,000 appropriation we received for a study.

And we are going to continue to work and study. Particularly are we going to watch the operation of the insuring plan.

Every insurance company official who came to me had a different way for doing this. But we all understand that they all want to do it the way they do it. And that is the way it is with most of the features of this bill, everybody who manages a pension plan comes in and says that the perfect plan is the one that he has.

I am sure my colleague, the ranking member, the gentleman from Illinois (Mr. Erlenborn) will assure the House that this was the great-

est job in the world in sifting and picking out the proposals that has ever been done, I believe, in the legislative field, in my experience of over 40 years.

The CHAIRMAN pro tempore. The time of the gentleman has expired.

(By unanimous consent, Mr. Dent was allowed to proceed for 2 additional minutes.)

Mr. DENT. I do not intend to take too much of the time of the House on this particular amendment because it has been hashed out. It is only a question of an opinion, an opinion on the part of the ranking Member, and those who follow the gentleman, that an independent sort of bureaucracy is to be created to manage a field about which there is little or no knowledge.

So I believe that the only way we are going to set up a permanent management corporation, or whatever it takes as far as the insurance end of this bill is concerned, will be after we have had sufficient experience as to just what the dues entail, and how much time has to be consumed.

As I am sure most of the Members know, most of these are negotiated plans, or the greater number of them will be negotiated plans, and in their negotiations they will pretty well write the prescription as to what the plan intends to do.

So the greatest job of the insuring board will be to see to it that they meet the minimum requirements of this legislation on funding, and in making sure the vesting provisions, if they are changed, find out what that will do to the fund itself and whether or not the board feels that they cannot make that change without adding more to the funding provisions. That is really all it does; to make sure that whatever is written into a contract is sound enough financially so that the fund will maintain its position and be able to meet the entitlement payments of the participants. That is all there is to it.

Mr. Chairman, I believe that this can very well be done under the Secretary of Labor and two officials or employees of the Secretary until we can get some history.

I am willing—and the gentleman from Illinois knows that I am willing, and I have agreed—that we ought to look into it. And in our oversight functions if we find 3 months from now or 6 months from now that it ought to be changed to this type of a board, then I for one will immediately propose such legislation.

The CHAIRMAN pro tempore. The time of the gentleman has again expired.

Mr. QUIE. Mr. Chairman, I move to strike the last word.

(Mr. Quie asked and was given permission to revise and extend his remarks.)

Mr. QUIE. Mr. Chairman, I support the amendment offered by my colleague, the gentleman from Illinois (Mr. Erlenborn). If I had my way, and I think if the gentleman from Illinois had his way, we would do more of a study of termination insurance before we embarked on termination insurance. But the decision was made in the committee that we ought to begin with termination insurance now. There is substantial support for this around the country because of the closing of some plants for termination insurance.

The chairman of the subcommittee, the gentleman from Pennsylvania (Mr. Dent), indicated that "a great deal must be learned." And it is true that a great deal must be learned—so we are going to learn how to operate termination insurance after it has been adopted.

Let us look at the way these two trust funds are administered by the corporation—and, of course, there is a third trust fund, but I seriously doubt whether the corporation will move into the single employer optional trust fund, and doubt that that fund would be set up before the Congress has a chance to review the single employer trust fund and the multiple employer trust fund.

The question revolved around the corporation board itself and that is what the issue is about, I think—the major issue here. The Secretary of Labor has always been a political appointee. That has always been the case. When the Secretary of Labor is confirmed, there are other issues that are considered than the two trust funds and the administration of them.

The other two individuals on the board as proposed by the bill before us will not be considered by the Congress at all. They will be selected by the Secretary of Labor as his employees entirely within his jurisdiction, and that means it is left to the whims of the executive branch. It is hard for me to understand why my colleagues on the other side of the aisle are not strongly in favor of the gentleman from Illinois' amendment, because his amendment enables those who are primarily influenced by the corporation with the trust funds—that is, the employers and organized labor—each to have three people on the board of that corporation, and then, of course, the two people from the general public.

As the gentleman from Pennsylvania (Mr. Dent) indicated, he said "we do not know where we are going," and it is true. We do not know exactly where we are going with termination insurance. I am convinced that at some later time we will realize we did wrong if we do not adopt the Erlenborn amendment and instead permit the corporation to be administered by the Secretary of Labor and two of his employees. If we look at the precedents of other examples of similar responsibilities throughout the Federal Government separate corporations or agencies have been set up separate from Cabinet level departments where the President makes the appointments, and the legislative branch then confirms. It is true we may not have the kind of opinion of the other body that they would like us to have. However, this is the precedent, that the Senate does advise and consent on the appointments of the President to reduce political influence, and that is what the Erlenborn amendment requires.

I believe it is correct as the gentleman from Pennsylvania (Mr. Dent) says we do not know exactly where we are going with termination insurance. There is a great deal to be learned about termination insurance, but as we do learn it, I think it will be better administered if those who are involved—that is, the employer groups and organized labor—each have three people on the board and are thereby enabled to assist in charting that course.

The serious nature of termination insurance, if it is not operated properly, is that the increase in the number of employees under private pension plans that has occurred in the last few years might cease.

and it may occur that some employers will terminate their pension plans, and that would be to the disadvantage of the employees of the country who need it.

So if these six people, three from the employers and three from the employees—are on the board, this will mean that they will administer it in a way that will keep the pension plans going and have the rates at the lowest level possible in order that we will not put them out of business.

Mr. PEYSER. Mr. Chairman, I move to strike the last word.

(Mr. Peyser asked and was given permission to revise and extend his remarks.)

Mr. PEYSER. Mr. Chairman, I, first of all, would like to thank the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. Dent), and the minority leader on our subcommittee, the gentleman from Illinois (Mr. Erlenborn), for allowing me as a nonmember of their subcommittee to sit with them for the past year and to work and actively take part in some way in trying to help with this legislation.

I would like to ask a few questions just to clarify some points for the record at this time dealing with this question of termination insurance. The real concern that exists is that some people may try to use this legislation and take advantage of it, if they can, in effect by copping out of a pension plan and dumping it into the insurance corporation and letting us foot the bill.

I would like to ask the chairman, the gentleman from Pennsylvania (Mr. Dent), this question: Is it his understanding, that on the question dealing with the termination insurance, before the Secretary allows a corporation or a trustee simply to say, "We are giving up this plan, we do not want it any more," and lets the termination insurance take over, the Secretary himself then can make the determination as to whether that will be allowed?

Mr. DENT. If the gentleman will yield, when it is in the best interest of the participants, the Secretary of Labor will be the sole voice in the matter, and this idea that any plan willy-nilly can decide because its conditions are bad to drop its obligations onto the Insurance Corporation, and then after the Insurance Corporation has taken over the bad marbles, the corporation or trustee can then start another plan—it just does not work that way. That is a figment of the imagination.

Mr. PEYSER. I think the answer to this question is of the utmost importance.

I thank the chairman.

It is our concern that the so-called sharp-shooters can take us over in this. It is my understanding based on what the chairman has said and looking at the legislation that this cannot happen and that there are built-in safeguards to handle this situation.

As to the makeup of the committee which has been developed here as an argument, it would seem to me, and I was actually going to offer an amendment at one point, the committee has to have a report from the Secretary of Labor no later than 2 years from the date of the passage of this bill in order that we can look at this again and study it, and at that time if it would make sense we can have an independent corporation take over. Is it the intention of the chairman under the oversight involved that we should look at this question in the future,

whether it is 1 or 2 years down the road, and really examine this to see what will happen?

Mr. DENT. Mr. Chairman, if the gentleman will yield it is my position and I think it ought to be the position of this House that if we create this bureaucracy we will never be able to unload it. It has never been done.

But since we have control and it is under a department of the Government there is nothing to stop us joining hands to create whatever is necessary if the Secretary of Labor is unable to handle it according to what will develop. Certainly we are going to review it and certainly we are going to have to do something probably in order to strengthen the Secretary of Labor if it becomes an onerous job for him or take it away and give it to the type of organization the gentleman wants, but I would appreciate it if we would give this a chance and let it work. I do not want to be responsible for something that turns out to be unworkable. It may even do that. I do not know. But I ask the gentleman to give us time to look at it.

Mr. PEYSER. I thank the chairman.

In closing on my own time I want to say this bill is of the utmost importance to the American people, to the millions and millions of men and women who are waiting for this kind of guarantee and protection that the total bill is going to represent to all of them.

Mr. DENT. Mr. Chairman, if the gentleman will yield further, I want to take this time to say the gentleman in the well has been a great help to this committee. He has the expertise and he viewed this subject strictly on the basis of the job to be done. There was never a question of partisanship during the entire discussions. He attended all of the hearings and meetings and his input into this has been tremendous.

I am sure the ranking minority member joins me in thanking the gentleman for his participation in this.

Mr. PEYSER. I thank the gentleman for his comments.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. Erlenborn).

The question was taken; and on a division—demanded by Mr. Erlenborn—there were—ayes 60, noes, 45.

RECORDED VOTE

Mr. DENT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 179, noes 217, not voting 35, as follows:

[ROLL NO. 53]

AYES—179

Abdnor	Bafalis	Brown, Ohio
Alexander	Bauman	Broyhill, Va.
Anderson, Ill.	Beard	Buchanan
Andrews, N.C.	Bell	Burgener
Andrews, N. Dak.	Blackburn	Burke, Fla.
Archer	Breaux	Burleson, Tex.
Arends	Brinkley	Butler
Armstrong	Broomfield	Byron
Ashbrook	Brotzman	Carter

Cederberg
Chamberlain
Chappell
Clancy
Clausen, Don. H.
Clawson, Del.
Cochran
Collier
Collins, Tex.
Conable
Conlan
Cronin
Daniel, Dan
Daniel, Robert W., Jr.
Dennis
Derwinski
Devine
Dickinson
Downing
Duncan
Edwards, Ala.
Erlenborn
Esch
Eshleman
Evins, Tenn.
Findley
Fish
Fisher
Flynt
Forsythe
Fountain
Frenzel
Frey
Froehlich
Gettys
Goldwater
Goodling
Griffiths
Gross
Grover
Gubser
Guyer
Haley
Hammerschmidt
Hansen, Idaho
Hastings
Hébert
Henderson
Hinshaw
Hogan
Holifield
Holt
Hosmer
Huber
Hudnut
Hunt
Hutchinson
Jarman
Johnson, Colo.
Jones, N.C.
Ketchum
King
Kuykendall
Landgrebe
Latta
Lent
Lott
Lujan
McClory
McCloskey
McCollister
McEwen
McSpadden
Mahon
Mallary
Martin, Nebr.
Martin, N.C.
Mathias, Calif.
Mayne
Miller
Minshall, Ohio
Mitchell, N.Y.
Mizell
Montgomery
Moorhead, Calif.
Nelsen
O'Brien
Parris
Passman
Pettis
Poage
Preyer
Price, Tex.
Quie
Quillen
Rarick
Rhodes
Robinson, Va.
Robison, N.Y.
Rogers
Roncallo, N.Y.
Rose
Rousselot
Runnels
Ruppe
Ruth
Satterfield
Scherle
Schneebeli
Sebelius
Shriver
Shuster
Sikes
Skubitz
Smith, N.Y.
Snyder
Spence
Stanton, J. William
Steelman
Steiger, Ariz.
Steiger, Wis.
Stuckey
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Thomas, Wis.
Thone
Thornton
Towell, Nev.
Treen
Van Deerlin
Vander Jagt
Veysey
Waggonner
Wampler
Ware
White
Whitehurst
Whitten
Wiggins
Wilson, Bob
Winn
Wyatt
Wydler
Wylie
Wyman
Young, Fla.
Young, Ill.
Young, S.C.
Zion
Zwach

NOES—217

Abzug
Addabbo
Anderson, Calif.
Annunzio
Ashley
Aspin
Badillo
Barrett
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blatnik
Boland
Bolling
Bowen
Brademas
Bray
Breckinridge
Brooks
Brown, Calif.
Brown, Mich.
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Casey, Tex.
Chisholm
Clark
Clay
Cleveland
Cohen
Collins, Ill.
Conte
Conyers
Corman
Cotter
Coughlin

Culver
Daniels, Dominick V.
Danielson
Davis, S.C.
de la Garza
Delaney
Dellums
Denholm
Dent
Diggs
Dingell
Donohue
Dorn
Drinan
Dulski
du Pont
Eckhardt
Edwards, Calif.
Eilberg
Evans, Colo.
Fascell
Flood
Flowers
Ford
Fraser
Fulton
Fuqua
Gaydos
Giaimo
Gibbons
Gilman
Ginn
Gonzalez
Grasso
Green, Pa.
Gude
Gunter
Hamilton
Hanley
Hanna
Hanrahan
Hansen, Wash.
Harrington
Harsha
Hawkins
Hays
Hechler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Hicks
Hillis
Holtzman
Horton
Howard
Hungate
Ichord
Johnson, Calif.
Johnson, Pa.
Jones, Ala.
Jones, Okla.
Jordan
Karth
Kastenmeier
Kazen
Kemp
Koch
Kyros
Landrum
Leggett
Lehman
Litton
Long, La.
Long, Md.
McCormack
McDade
McFall
McKay
McKinney
Macdonald
Madden
Madigan
Mann
Maraziti
Mathis, Ga.
Matsunaga
Mazzoli
Meeds
Melcher
Metcalfe
Mezvinsky
Milford
Minish
Mink
Mitchell, Md.
Moakley
Mollohan
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers
Natcher
Nedzi
Nix
Obey
O'Hara
O'Neill
Owens
Patman
Patten
Pepper
Perkins
Peyser
Pickle
Pike
Price, Ill.
Pritchard
Railsback
Randall
Rangel
Regula
Reid
Reuss
Riegle
Rinaldo
Rodino
Roe
Roncalio, Wyo.
Rosenthal
Roush
Roy
Roybal
Ryan
St Germain
Sandman
Sarasin
Sarbanes
Schroeder
Seiberling
Shipley
Shoup
Slack
Smith, Iowa
Staggers
Stanton, James V.
Stark
Steed
Steele
Stephens
Stratton
Stubblefield
Studds
Symington
Teague
Thompson, N.J.
Tiernan
Udall
Ullman
Vander Veen
Vanik
Vigorito
Waldie
Walsh
Whalen
Widnall
Williams
Wilson, Charles H., Calif.
Wilson, Charles, Tex.
Wolff
Wright
Yates
Yatron
Young, Alaska
Young, Tex.
Zablocki

NOT VOTING—35

Adams
Baker
Boggs
Brasco
Broyhill, N.C.
Burton
Camp
Carey, N.Y.
Carney, Ohio
Crane
Davis, Ga.
Davis, Wis.

Dellenback	Michel	Rooney, N.Y.
Foley	Mills	Rooney, Pa.
Frelinghuysen	Moss	Rostenkowski
Gray	Nichols	Sisk
Green, Oreg.	Podell	Stokes
Jones, Tenn.	Powell, Ohio	Sullivan
Kluczynski	Rees	Young, Ga.
Mailliard	Roberts	

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. STEIGER OF WISCONSIN

Mr. STEIGER of Wisconsin. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Steiger of Wisconsin: On page 113, lines 16, 17, 18, delete the phrase "and two officers or employees of the Department of Labor who shall serve as directors at the pleasure of the Secretary." and insert in lieu thereof the phrase ", Secretary of the Treasury, and the Secretary of Commerce."

(Mr. Steiger of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Chairman, the amendment that I have offered restructures the board of the corporation which is designed to administer pension plan termination insurance.

As you know, under the bill as it comes before us the make-up of the board is such that, at least in my judgment, it is not one that will work as effectively as I think this board ought to be able to work. So the amendment I have offered would provide that the board of the corporation will be made up of the Secretaries of Labor, Commerce, and Treasury instead of the way it is in the bill now. The Secretary of Labor would remain the chairman and the corporation would remain within the Department of Labor. I have not proposed any change in that operation.

There are, I think, two substantive reasons why this concept ought to be considered by the House. First, by including the three Secretaries on the board, jurisdictional conflicts between the three Departments can be best resolved. Second, all three Departments, Commerce, Labor, and Treasury, are involved with the various components of pension plans.

The Department of Labor obviously is concerned about the employees of those pension plans; the Department of Commerce with the employers; and the Department of the Treasury with the Internal Revenue Service, and Federal revenues. It stands to reason, then, that the three Departments should all be represented on the board of the corporation. The current structure, whereby the Secretary of Labor, and then by his appointment, two assistants, make up that board, means that the board is not focused as broadly as it ought to be.

The Senate recognized this problem, and adopted a structure for the corporation exactly similar to the one I have proposed. It seems to me that the concept of bringing in the three departments and trying to resolve jurisdictional conflicts in an appropriate fashion, recognizing that the Senate has already adopted this amendment, means that there are valid reasons why this amendment ought to be adopted by the House, and I urge adoption of the amendment.

Mr. DENT. Mr. Chairman, I rise to oppose the amendment offered by the gentleman from Wisconsin (Mr. Steiger).

Mr. Chairman, I just want to say that this would bring the structure of both bills alike, and eliminate the differences, and this would not give us the freedom to work in the conference that we need. There may very well even be in the conference discussion on the type of proposal that the gentleman from Illinois (Mr. Erlenborn) wants. Or they may accept our position, or we may accept their position. But at this point I think we ought to keep that difference, so that we will have something to confer on. Therefore, I would ask for a "no" vote on the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin (Mr. Steiger).

The amendment was rejected.

Mr. THOMPSON of New Jersey. Mr. Chairman, I move to strike the last word.

(Mr. Thompson of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON of New Jersey. Mr. Chairman in reviewing the provisions dealing with exclusion of certain employees from eligibility, my attention was directed to subtitle A, part I, subpart II, section 410(b)(2)(A) set forth at pages 168 and 169 of the bill.

This section drafted by the Ways and Means Committee carves out an exception from the rule against discrimination, by providing that employees under union contracts need not be covered by pension protection where there is evidence that pension was the subject of good faith bargaining between the employee representative and such employers.

Mr. Chairman, when I read this language I was distressed because it seemed to me as chairman of the Labor Subcommittee that the committee was opening up a gigantic loophole in the prohibitions against discrimination. The term "bargaining in good faith," Mr. Chairman, is a word of art, delineated over the past 35 years by numerous decisions of the U.S. Supreme Court.

As applied to a particular term and condition of employment such as pensions, it would mean simply, Mr. Chairman, that an employer must discuss it with an open mind—if it is brought up. It would not mean that an employer has to offer a pension program in general or a particular pension proposal, or even accept the concept of pensions at all. It surely does not require that an employer agree to any pension proposal at all.

Now, Mr. Chairman, if the bare language of section 410(b)(2)(A) were all I was considering I would be opposed to this bill, because all an unscrupulous employer need do was participate in any collective bargaining negotiation where the subject of pensions was raised—either by the union or the employer—and he subsequently would be free to exclude such employees from participation in any pension plan set up for his other employees. Mr. Chairman, I could not believe that the Ways and Means Committee could ever have proposed—or this committee ever have acquiesced—in such an unfair procedure. So I reviewed the portion of the Ways and Means Committee report on H.R. 12481 dealing with this matter, as set forth on page 49. The explanation given there is that nonbargaining unit employees

should not be denied pension protection in the instances where bargaining unit employees have been offered a pension program, but preferred some other form of benefits and elected not to be covered by a pension plan.

Mr. Chairman, I gather from that explanation that the Ways and Means Committee was not using the term "bargaining in good faith" in its technical labor law sense, as we know it, but in a tax sense, where an employer has definitely offered a pension program to his bargaining unit employees, but for reasons best known to them, they have chosen to reject it, in favor of some other form of compensation or benefit.

Is my interpretation "correct," that the exception would not be permitted where an employer had simply discussed the subject of pensions with the employee representative, without definitely offering a pension program to the bargaining unit employees?

Mr. ULLMAN. Will the gentleman yield?

Mr. THOMPSON of New Jersey. I yield to the gentleman from Oregon.

Mr. ULLMAN. The gentleman from New Jersey is right. The language that he refers to on page 49 I think might best be in the Record. It says:

> If a pension plan coverage had been discussed with other representatives of the union employees, and no pension coverage was provided, either because the union employees were covered under a union plan (which might or might not offer comparable benefits to those provided under the employer plan), or because the employee representative opted for higher salaries, or other benefits, in lieu of pension plan coverage, or for some other valid reason, then it would be permissible to exclude these union employees from the calculations.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. Thompson of New Jersey was allowed to proceed for 5 additional minutes.)

Mr. THOMPSON of New Jersey. Mr Chairman, as chairman of the House Labor Subcommittee I have a question on the next subsection 410(b)(2)(B), dealing with airline pilots which I understand is designed to alleviate certain problems which pilots have encountered with the Internal Revenue Service because their union-negotiated pension plans are substantially higher than those of other employees represented by other unions on various airlines.

Mr. Chairman, I support this exception but I am concerned that the Service not construe this exception so as to preclude, in other multi-union industries such as maritime and construction, unions from negotiating solid pension protections for their members.

Mr. Chairman, in the maritime industry, for instance, licensed pilots and engineers might negotiate a more substantial pension plan than another union covering less skilled workers.

Or, on construction a highly skilled craftsman, such as an electrican, might be covered by a higher pension than a relatively unskilled employee.

This is a fact of life in this industry, and to my knowledge, the service has never challenged these plans. Surely, the committee would not knowingly disturb the stabilized conditions in other multicraft situations, specifically to relieve the airline pilots' problems.

Now, Mr. Chairman, aside from skills, as the Ways and Means Committee points out in its report, one unit of workers may elect to place more of its collective bargaining emphasis upon pensions, than another unit. Indeed, in many cases it has been impossible to persuade employee units to forgo present compensation for future pension protection.

Mr. Chairman, am I correct in assuming that it is not the intent of the committee in specifically alleviating the active, ongoing problem of the airline pilots, and foreclose other highly skilled workers in other craft bargaining situations, such as maritime and construction, from negotiating with their employers for a higher pension benefit, than other employees of such employers.

Mr. ULLMAN. If the gentleman will yield further.

Mr. Chairman, the airline pilots provision is a relief provision. It is not intended to tighten the coverage requirements under present law. If the plans such as you describe meet the coverage requirements under present law, I am sure they will continue to do so after this bill is enacted.

Mr. THOMPSON of New Jersey. I thank the gentleman.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. Are there further amendments to part 4? If not, the Clerk will read.

The Clerk read as follows:

* * * * * * *

[The text of part 5 of H.R. 12906 appears on pp. 2904–2922.]

Mr. DENT (during the reading). Mr. Chairman, I ask unanimous consent that part 5 be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. MOAKLEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I have a question to ask the gentleman from Pennsylvania, the chairman of the committee (Mr. Dent) concerning section 506 of H.R. 12906, titled "Other Agencies and Departments". I would like to know whether it is the intent of this section, particularly of section b, that the Secretary shall utilize State agencies and civil service employees where competence and experience is already established.

For example, in the State of Massachusetts, the health, welfare, and retirement board has been in existence since 1959. It has, in that time, been performing many of the functions now given to the Secretary in this bill. The health, welfare, and retirement board is staffed by civil service employees who qualified for their positions by passing examinations on both State and Federal law.

In Massachusetts, this board has been responsible for seeing that plans register, file annual reports, and summaries of those reports, file plan descriptions and provide benefit descriptions and financial statements to members.

I would like the record to establish as the legislative history of this bill whether it is the intent of Congress that an agency such as the Massachusetts board shall be utilized, and that civil service employees,

many of whom have spent their careers gaining experience in this field, should also be utilized by the Secretary.

Mr. DENT. If the gentleman will yield, yes, we expect the Secretary to utilize the facilities of the States to the extent possible to implement the overall policy of this bill with respect to plans exempted from the disclosure and reporting requirements under section 105 of the bill.

AMENDMENT OFFERED BY MR. BADILLO

Mr. BADILLO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Badillo: Page 162, insert after line 11 the following:

Subtitle C—Voluntary Portability Program for Vested Pensions

PROGRAM ESTABLISHED

SEC. 601. (a) There is hereby established a program to be known as the Voluntary Portability Program for Vested Pensions (hereinafter referred to as the "Portabilty Program"), which shall be administered by and under the direction of the Secretary. The Portability Program shall facilitate the voluntary transfer of nonforfeitable benefits between registered pension plans. Nothing in this subtitle or in the regulations issued by the Secretary hereunder shall be construed to require participation in such Portability Program by a plan as a condition of registration under section 512.

(b) Pursuant to regulations issued by the Secretary, plans registered under section 512 may apply for membership in the Portability Program, and, upon approval of such application by the Secretary, shall be issued a certificate of membership in the Portability Program (plans so accepted shall be hereinafter referred to as "member plans").

ACCEPTANCE OF DEPOSITS

SEC. 602. A member plan shall, pursuant to regulations prescribed by the Secretary, pay, upon request of the participant, to the fund established by section 603, a sum of money equal to the present value of the participant's nonforfeitable rights under the plan, which shall be in settlement of such nonforfeitable rights, when such participant is separated from employment covered by the plan before the time prescribed for payments to be made to him or to his beneficiaries under the plan. The fund is authorized to receive such payments, on such terms as the Secretary may prescribe.

SPECIAL FUND

SEC. 603. (a) There is hereby created a fund to be known as the Voluntary Portability Program Fund (hereinafter referred to as the "Fund"). The Secretary shall be the trustee of the Fund. Payments made into the Fund in accordance with regulations prescribed by the Secretary under section 602 shall be held and administered in accordance with this subtitle.

(b) With respect to such Fund, it shall be the duty of the Secretary to—

(1) administer the Fund;

(2) report to the Congress not later than the first day of April of each year on the operation and the status of the Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next two fiscal years and review the general policies followed in managing the Fund and recommend changes in such policies, including the necessary changes in the provisions of law which govern the way in which the Fund is to be managed; and

(3) after amounts needed to meet current and anticipated withdrawals are set aside, deposit the surplus in interest-bearing accounts in any bank the deposits of which are insured by the Federal Deposit Insurance Corporation or savings and loan association in which the amounts are insured by the Federal Savings and Loan Insurance Corporation. In no case shall such deposits exceed 10 per centum of the total of such surplus, in any one bank, or savings and loan association.

INDIVIDUAL ACCOUNTS

SEC. 604. The Secretary shall establish and maintain an account in the Fund for each participant for whom the Secretary receives payment under section 602. The amount credited to each account shall be adjusted periodically, as provided by the Secretary pursuant to regulations to reflect changes in the financial condition of the Fund.

PAYMENTS FROM INDIVIDUAL ACCOUNTS

SEC. 605. Amounts credited to the account of any participant under this subtitle shall be paid by the Secretary to—

(1) a member plan, for the purchase of benefit rights having at least an equivalent actuarial value under such plan, on the request of such participant when he becomes a participant in such member plans;

(2) a qualified insurance carrier selected by a participant who has attained the age of sixty-five, for the purchase of a single premium life annuity in an amount having a present value equivalent to the amount credited to such participant's account, or in the event the participant selects an annuity with survivorship options, an amount determined by the Secretary to be fair and reasonable based on the amount in such participant's account; or

(3) to the designated beneficiary of a participant in accordance with regulations promulgated by the Secretary.

TECHNICAL ASSISTANCE

SEC. 606. The Secretary shall provide technical assistance to employers, employee organizations, trustees, and administrators of pension and profit-sharing-retirement plans in their efforts to provide greater retirement protection for individuals who are separated from employment covered under such plans. Such assistance may include, but is not limited to (1) the development of reciprocity arrangements between plans in the same industry or area, and (2) the development of special arrangements for portability of credits within a particular industry or area.

Amend the table of contents of the bill accordingly.

Mr. BADILLO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. Badillo asked and was given permission to revise and extend his remarks.)

Mr. BADILLO. Mr. Chairman, although this measure on the whole is sound, it contains a glaring defect—the failure to make provision for portability. Even though the measure calls for the establishment of three vesting rules aimed at increasing a worker's pension security, accrued pension rights in one plan without any provision for transferring to another job can become nothing more than a ball and chain by which older workers are tied to inadequate and insecure jobs. I do not mean to minimize the importance of vesting yet a vested pension belongs to the employee and he must have the right to move to some other type of employment in some other area if he so chooses, particularly if he is required to do so by economic necessity. As Senator Birch Bayh so aptly noted in a recent article:

> For a country that prides itself on a mobile population, that mobility should not be at the expense of the individual worker's retirement security.

Portability enables a worker to transfer his pension rights should he decide to change jobs or be forced to do so.

With a changing economy, there are continuing shifts in the needs of manpower. Oftentimes, however, private pensions tend to act as an

unnecessary barrier to labor mobility by tieing workers to a particular employer. During his appearance before the House General Labor Subcommittee last year Mr. Ralph Nader very perceptively observed that—

> Without some sort of mechanism to make pension credits portable, the more mobile employee will almost invariably end up with a lower pension at retirement.

Particularly in light of past failings in the private pension sector, a worker should have the right to assemble all of the vested pension contributions he had made during his working years into one sufficient benefit—one based on contributions which have earnings and growth to the final day of his active employment.

I believe that a meaningful vesting arrangement will furnish workers with much needed protection for their accrued pension rights. By the same token I feel that additional security is required and I am therefore offering an amendment which seeks to establish a voluntary portability program for vested pensions.

The language I am proposing is identical to that contained in the original Williams-Javits bill and included in the bill passed by the Senate. While it does not require the establishment of portability programs, it does encourage their formation in an attempt to provide the most optimum protection to workers. Such a voluntary portability system would permit companies to allow their employees to carry their vested rights from one company to another when changing jobs.

The weakest possible portability provision is what is contained in the Senate bill. Frankly, I would have preferred to support the much more substantive proposal which was offered by the senior Senator from Indiana (Mr. Hartke) under which a mandatory portability program would be established, including the creation of a national pension clearing-house or regional ones to coordinate portability activities. Unfortunately, the parliamentary situation is such that I would probably not be able to propose this more comprehensive plan and must therefore offer the voluntary system. While some may believe that it is foolish to propose a voluntary system which many pension plans will not choose to join, I feel very strongly that the principles of portability must be established and that we must have a foundation upon which to build for future—and hopefully more concrete—legislation.

There are those who contend that a fully vested pension will preclude the necessity for portability. It must be realized, however, that inflation will seriously erode the value of vested credits and that a benefit which is vested but not portable is not available in the event of disablement. Further, as Senator Hartke stated during Senate debate on the pension legislation "Vesting without portability will often prove inadequate because employees will not feel the vested benefit alone is dependable and so may withdraw from the plan, thereby losing valuable credits." Thus, vesting and portability cannot be considered to provide the same protections.

We must also consider the fact, Mr. Chairman, that workers in this country do not typically remain with one employer during a lifetime. A Labor Department job tenure study shows that the median employment period for men at ages 45 through 49 was 10.2 years, for men 40 through 44 it was 8.4 years on their current job and only 5.8 years for men aged 35 to 39. The figures for women were significantly lower—as low as 2.6 years for women at ages 35 through 39. This study

also revealed that, in the wholesale and retail trades, for example, the median years of employment for men between 25 and 44 was 3.3 years, as compared with 1.5 for women in the same age bracket, and that for male workers over the age of 45 it was 8.8 years and for women in the same category, 4.9 years. Thus, in a society in which individual and corporate mobility is increasing, there is a clear and intensified need for pension credit accumulation for employees as they move from one job to another, often in different locations throughout the country.

Opponents of portability argue that there are too many complexities involved with implementing such a system and maintain that portability would cause more rigidities which would possibly retard further pension growth. The contention that it would be too difficult to establish and carry out a portability system is simply a bureaucratic ploy to avoid doing it and I believe that the fears about possibly retarding pension growth are unfounded. Others maintain that a portability system should not be implemented at this time as it requires further study—another typical delaying tactic. However, it is for these reasons that I have chosen a voluntary system. Thus, not only would a mechanism exist under which workers' pension rights can be further protected and liberalized but there would also be a device whereby some practical experience could be gained with a view toward determining the efficacy of requiring the implementation of portability programs. I urge, therefore, the adoption of my amendment and hope that employers will see fit to undertake the establishment of meaningful portability programs so that American workers may have greater mobility in the labor market.

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I understand that the provision being offered by the gentleman from New York (Mr. Badillo) is the same provision as the Senate-passed bill relative to portability.

I would point out, because I do not think it has been made clear, that the only thing that is portable—the only thing that is portable—under that provision is a vested right. A lot of people have the idea that portability means that a worker can work a couple of years here and a couple of years there and total them all up and then get a nice pension. This portability is not that sort of provision. A worker must have a vested right before it even becomes portable under a portability plan.

Even the AFL–CIO in their commentary on this bill pointed out that cashing out a vested right and moving it to another place will mean the employee ultimately will wind up with less of a pension than if he draws his pensions from those several employers where he has vested rights.

There is no strong push behind this portability provision. This is not going to do what many employees would like to have done.

Mr. Nader in talking about portability did not have this in mind at all. I was there and I know what he was talking about. He wanted us to prohibit defined benefit pension plans from even being carried on. Mr. Nader wanted us to move to a money purchase plan.

In effect, money purchase is a savings account, so that when people retire, they can draw out what was put in, but when they run out of it

they have no further retirement security, so that Mr. Nader's suggestions really fell on deaf ears on both sides of the aisle.

Mr. Chairman, I would just say that any attempt to add portability to this bill does no good for the working men and women of this country. It is not supported by the AFL–CIO to my knowledge, because they had nothing good to say about it.

Mr. Chairman, I would hope that the amendment would be defeated.

Mr. BADILLO. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. Mr. Chairman, I yield to the gentleman from New York.

Mr. BADILLO. Mr. Chairman, I agree with the gentleman that the provision in the Senate bill is a weak provision. I said that I would like to have at the same time a stronger provision, as Mr. Nader and other people would want.

I am pointing out that because we have a weak provision in the Senate bill is no reason to have no provision at all. Let us have at least a provision that will give rights where there is total vesting. My amendment would get the principle of portability put into the bill, so that at a later time we can get the strong kind of provision I feel is necessary.

Mr. ERLENBORN. Mr. Chairman, I appreciate what the gentleman wants to do, but I would say that this is not just a weak provision. It is a provision, if it were utilized, which would reduce the benefits that employees can expect to get when they retire. This is worse than no provision at all.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, I join with the gentleman from Illinois in his opposition. The simple fact is that under present law everything that this particular amendment purports to do can and is being done. It is a question of voluntary acceptance of one plan by another. There is nothing that can add anything to that.

Mr. Chairman, I pointed out to the Senators that they had just put a lot of wordage into the bill that did not do any more than they could do now except give a promise that could not be kept, because at this moment, as the gentleman knows, we have worked 7 years on this. Much of that time has been on the question of portability, and no agency has been able to give us—including organized labor, the managers of many plans in the country, insurance companies, bankers, actuarial experts—no one has been able to give us any kind of an estimate, any kind of a proposition that would be workable among over 155,000 plans plus about 200,000 individual plans.

Mr. Chairman, I agree with the gentleman from Illinois that this amendment ought to be defeated.

Mr. ULLMAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I want to say that this provision on portability is taken from the old Senate bill, which the Senate itself did not see fit to adopt. This provision in any case is defective because if funds are moved from a private pension program into the portability fund, this would be a taxable transaction and that would render the whole program useless.

Therefore, I hope we vote the amendment down, and let us take up the subject of portability in a responsible way sometime in the future.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New York (Mr. Badillo).

The amendment was rejected.

Mr. DENT. Mr. Chairman, we have no further amendments.

The CHAIRMAN (Mr. Boland). If there are no further amendments to title I, under the rule, the bill H.R. 12855 as title II of said substitute is considered as having been read for amendment.

No amendments are in order to title II except amendments offered by the Committee on Ways and Means which are not subject to amendment, and germane amendments to subsections 2001(a)(1)(A), 2001(a)(2), 2001(b) and 2001(e)(3) of title II.

Are there any amendments from the Committee on Ways and Means to title II of the substitute?

[The text of H.R. 12855 and the report thereon appear on pp. 2924, 3115.]

AMENDMENTS OFFERED BY MR. ULLMAN

Mr. ULLMAN. Mr. Chairman, I offer a series of both technical and conforming amendments. I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. ULLMAN:

Page 163, beginning in line 17, strike out "the later" and insert in lieu thereof "any".

Page 164, strike out line 1 through line 4, and insert in lieu thereof the following:

"(A) in the case of an employee who begins his period of service on or after the date he attains the age of 24, the date on which he completes 1 year of service; or

"(B) in the case of an employee who begins his period of service before he attains the age of 24, the date on which he completes 3 years of service or the date on which he attains 25 years of age, whichever date is earlier.

Page 164, line 9, strike out "subparagraph (B)" and insert in lieu thereof "this paragraph".

Page 164, strike out line 10 and insert in lieu thereof the following:
by substituting for subparagraphs (A), and (B) "the date on which he completes 3 years of service".

Page 224, line 7, strike out "and (15)," and insert in lieu thereof "(15)".

Page 293, line 17, strike out ", and (19)".

Page 315, line 20, strike out "preferences" and insert in lieu thereof "preferences)".

Page 323, line 7, after the period insert: "In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)".

Page 332, line 12, after "allowance" insert "as".

Page 335, line 9, strike out "(e)".

Page 327, after line 23, insert the following new paragraph:

"(4) SPECIAL RULE FOR SECTION 403(b) CONTRACTS PURCHASED BY EDUCATIONAL INSTITUTIONS.—In applying paragraph (1)(B) in the case of amounts contributed for an annuity contract described in section 403(b) for the year in which occurs a participants' separation from service for an educational institution (within the meaning of section 151(e)(4)), the amount taken into account

under paragraph (1) (B) shall be not less than the amount of the exclusion allowance which would be determined under section 403(b) (2) (without regard to this section) for the participant's taxable year in which such subsection occurs if—

"(A) the participant's years of service were computed only by taking into account his service for the employer during the 4-year period ending on the date of such separation, and

"(B) the participant's includible compensation were an amount equal to one-fourth of the aggregate amount of compensation for such 4-year period which is received from the educational institution and which is includible in gross income (computed without regard to sections 105(d) and 911 and computed by excluding any amount contributed by the employer for any annuity contract to which section 403(b) applies).

This paragraph shall apply only if the taxpayer elects its application at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under this paragraph with respect to any individual."

Page 338, strike out lines 15 and 16 and insert: "by the sum of (A) the amount of the tax imposed by paragraph (1)(A) paid with respect to such other distributions, plus (A) that portion of the tax on the aggregated total taxable amounts which is attributable to annuity contracts."

Page 343, strike out line 14 and all that follows down through line 19 and insert in lieu thereof the following:

(H) MINIMUM PERIOD OF SERVICE.—No amount distributed to an employee from or under a plan may be treated as a lump sum distributed under subparagraph (A) unless he has been a participant in the plan for 5 or more taxable years before the taxable year in which such amounts are distributed.

Mr. ULLMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. ULLMAN. Mr. Chairman, on behalf of the Ways and Means Committee I offer the following technical amendments to sections 2003 and 2004 of the substitute. The amendments to section 2004 clarify two items with regard to the tax treatment of lump-sum distribution. The first of these two, on page 338 of the substitute, makes it clear that a tax is not to be imposed on an annuity contract distributed as part of a lump-sum distribution. The second of these amendments, to page 343 of the substitute amendment, makes it clear that there is no change in the present provision of the tax laws that exclude from current taxation the unrealized appreciation in employer securities attributable to the amount contributed by the employee. Any such appreciation will, of course, be taxed when it is realized.

Both of these amendments, I emphasize, are designed to make it clear that present law is unchanged by the bill.

The other two amendments, to section 2003, deal with so-called tax-sheltered annuities. The amendment to page 327 of the substitute amendment permits employers of people such as school teachers to make "catch-up" purchases of tax-sheltered annuities for the school teacher in an amount no greater than that permitted by current law, even though this "catch-up" payment would otherwise violate certain of the limitations on contributions imposed by the bill. Such a "catch-up" contribution could be made, first, only once in the teacher's lifetime; second, could "catch-up" only for contributions not made during the prior 3 years; third, could be made only for the year in which the teacher leaves the job; and fourth, could in no event exceed the $25,000 annual limit on contributions.

The other amendment to this section, to page 323 of the substitute amendment, provides that, if the employer makes a contribution to a tax-sheltered annuity plan in excess of the maximum permitted amounts, then the employee is going to have to take into income the amount of this excess. There was concern that the bill could have been read to require the entire payment to be taken into the employee's income if there was even 1 penny of excess contribution and we did not want to leave room for the bill to be interpreted to reach that very severe result.

Finally we have offered an amendment to conform to the change made by the Abzug amendment to title I.

Mr. SCHNEEBELI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendments, as outlined by the gentleman from Oregon (Mr. Ullman), the chairman of the committee.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Oregon (Mr. Ullman).

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. REUSS

Mr. REUSS. Mr. Chairman, I offer several amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. REUSS: Section 2001 is amended—

(1) at page 280, lines 9 through 17, paragraph (1) of subsection (a), to read as follows:

"(1) Paragraph (1) of section 404(e) is amended by striking out 'subject to the provisions of paragraph (2)' and inserting in lieu thereof 'subject to paragraphs (2) and (4)'."

(2) at page 280, lines 18 through 21, paragraph (2) of subsection (a), by striking out the paragraph and renumbering subsequent paragraphs accordingly.

(3) at page 281, lines 8 through 15, subsection (b), by striking out the subsection and renumbering subsequent subsections accordingly.

(4) at page 288, line 4, paragraph (3) of subsection (e), by striking out "$7,500" and inserting in lieu thereof "$2,500".

(Mr. Reuss asked and was given permission to revise and extend his remarks.)

Mr. REUSS. Mr. Chairman, the Committee on Ways and Means bill would extend the so-called Keogh plan deduction for professional people, self-employed people, from $2,500, where it has been for some years, to $7,500. My amendment would keep it where it now is.

There are two reasons for my amendment.

In the first place, the $7,500 deduction which would be allowed if the amendment is not adopted would give a doctor or a dentist or an accountant making $50,000 a year the equivalent of a check for $3,750. I say that, because he would be in the 50-percent bracket and allowing him a tax-free deduction of $7,500 would have that effect.

This at a time when millions upon millions of modest-income people, those making $15,000 a year and less, are being very badly hit by the

very sharp increases in their payroll taxes of the last year or two, and when they are being further buffeted by an inflation in food and fuel which falls upon them with a particular burden. For us to give a very substantial tax reduction to people in the upper 5 percent of the income receivers while forgetting all about the lower income two-thirds of the American families seems to me to be a badly skewed sense of priorities.

The tax preference being granted here would cost taxpayers $175 million a year. Those who do not get it, of course, will have to pay for it, and that, in my judgment, compounds the inequity.

It will be said, "Oh, you have to do something for the $50,000-a-year doctor, lawyer, or professional person, because if he belonged to a corporate pension plan and was an employee or officer of a corporation, he would be allowed to deduct a very large sum, up to about $35,000 a year." Well, that is true, but the answer is not to pile loophole upon loophole.

We should lower the preference to corporate pension-holders.

Unfortunately, the rule which confronts us, one that does not allow germane amendments except in the one instance, prevents our attacking that which really ought to be attacked; namely, the practically unlimited bonanza offered very wealthy people under corporate pension plans. It is true that the bill does set a limit of about $75,000 a year pension which could be drawn on, a level corresponding to about a $35,000 a year input, but this is wholly out of line in the single equity. If the Ways and Means Committee would let us, we ought to reduce the corporate-plan preference.

A second reason for not going along with the committee in this $7,500 tax preference is that it would leave a terrible hodge-podge in our system. If you are the beneficiary of a qualified corporate pension, you get $35,000 a year, approximately tax free. If you are a self-employed professional with a qualified Keogh plan, you get $7,500 a year. But if you are a mobile engineer or a fishery worker or some one of the 40 million workers in this country who are working for a corporation without a qualified pension plan, then your maximum is $1,500 a year. What kind of justice is this?

I suggest that this $35,000 or $7,500 or $1,500 represents the approximate disparate political weights of these various groups rather than any real attempt to do equity.

By telling the Committee on Ways and Means that we in the House here are perfectly capable of making basic tax judgments ourselves, and by voting in favor of the amendment I offer, we will get our tax-writing committees to introduce some equity into the disparate differential treatment of these various income tax groups.

Therefore, Mr. Chairman, I urge Members to vote in favor of the amendment I have offered, so as to leave the situation where it now is.

Mrs. GRIFFITHS. Mr. Chairman, I move to strike out the last word.

(Mrs. Griffiths asked and was given permission to revise and extend her remarks.)

Mrs. GRIFFITHS. Mr. Chairman, I oppose the amendment offered by the gentleman from Wisconsin (Mr. REUSS). I would like to point out that in this bill there are only three efforts to try to bring closer together the tax-deferred retirement savings of different groups. One of those is the limitation of $25,000 per year, or 25 percent of the income which applies to a corporate deferred contribution pension plan.

The second one is this effort to raise the Keogh plan from $2,500 to $7,500. And the third is the attempt to give all individuals who were not under corporate or Keogh plans the right to save $1,500 a year.

The real effort in this bill is to see to it that the money that has been set aside from tax stream is used so that the people who are supposed to get pensions really do get them.

All pensions, as far as I know, are paid for, either originally from tax free money, or finally they are paid out of the tax stream.

If there were a real effort on the part of the gentleman from Wisconsin who offered this amendment, to knock down the $25,000 maximum contribution to a corporate plan—that comes out of the tax stream—I might go along with the gentleman. But I would like to show you what the gentleman really is doing.

As most of the Members are aware, I am going to leave the Congress at the end of this year. For 20 years I have paid into a pension fund, along with the rest of the Members, and when I leave here I will draw a pension of $21,250 a year. My husband and I went to the same schools, and got approximately the same grades, and my husband is a lawyer. He has never had an opportunity to pay into a corporate pension fund. The only money that he could have saved before taxes would have been if he had set up a Keogh plan for his law firm covering everybody else, along with himself.

I would like to point out to the Members that we here in Congress are a favored few. The $20,000 that people who retired drew last year, has increased within the last 11 months, I believe 6 percent at one time, and 5 percent at another time. If I were lucky enough to live to the beginning of the next century my pension would be more than $40,000 a year, but every cent that I put into that pension fund will be withdrawn by the time I have been gone for 17 months.

What the gentleman from Wisconsin (Mr. Reuss) is attempting to do is to say that doctors and lawyers who are going to draw their money under the Keogh plan, are all wealthy, but he is quite wrong, because the wealthy law firms have already incorporated, and so have the wealthy medical firms, and so they are putting $25,000 yearly into a plan, which can pay them $75,000 yearly. We have a distinction between those who incorporate and those who do not. And what the gentleman from Wisconsin is attempting to do will affect those who are not incorporated. And those who do not incorporate will include, although perhaps it is not even popular to think of it now, the man who runs the gas station, the man who runs the grocery store, the man who runs the pharmacy, anyone who has a plumbing concern, or any other of these people who run an individual business, the grocer, the candlestick maker, the baker, the farmer, and whoever else may be running individual businesses. If we go along with the gentleman from Wisconsin, we are now saying to these people, we will let you put only $2,500 a year into your pension plan.

Also, we will require them to cover everyone else in their firm in this case. But we will also say, we will let you take $1,500 a year if you do not cover anybody. This does not make sense.

I have the highest regard for the gentleman from Wisconsin, but in this particular amendment he could not be more unfair. He could not be more wrong. What he is really doing is hitting at the person in our society who is taking all of the risks.

The CHAIRMAN. The time of the gentlewoman has expired.

(By unanimous consent, Mrs. Griffiths was allowed to proceed for 2 additional minutes.)

Mrs. GRIFFITHS. He is hitting the private entrepreneur. He is hitting the person who is attempting to cover all of the other employees. He is not objecting to the large corporate pensions. He is not really objecting to the fact that Congressmen are drawing pensions. These pensions all come out of the tax stream, too. The only person he is objecting to is the very person who made America. It is a part of the American tradition that one start on his own and work. We are doing equity for everybody else, but that man.

Mr. Chairman, I hope the Members resoundingly defeat this amendment and give those who are on their own a chance.

Mr. SCHNEEBELI. Mr. Chairman, I move to strike the last word.

(Mr. Schneebeli asked and was given permission to revise and extend his remarks.)

Mr. SCHNEEBELI. Mr. Chairman, I join the gentlewoman from Michigan in opposing this amendment. I should like to supplement some of the figures which she has submitted.

Under existing law there is virtually no limitation on what a corporate officer can put into a pension plan. In this bill we have included separate limitations on defined contribution plans amounting to 25 percent of his income up to $25,000, and for defined benefits plans an amount necessary to fund a pension equal to 100 percent of an employees' high 3-year average salary not to exceed $25,000.

If we went along with the proposal of the gentleman from Wisconsin, the self-employed individual would be limited to $2,500 a year, one-tenth of what this bill proposes for a qualified defined contribution plan. What has happened as a result of this differential? Between 1968 and 1971 the law corporations that were formed by individuals have increased from 158 to 3,000. The medical corporations in that same period of time increased from 1,600 to 19,000. They were driven to incorporate because of the limitation imposed upon the self-employed.

Mr. CONABLE. Mr. Chairman, will the gentleman yield?

Mr. SCHNEEBELI. I yield to the gentleman from New York.

Mr. CONABLE. I thank the gentleman for yielding.

I would like to associate myself with his remarks and with the remarks of the gentlewoman from Michigan.

It seems to me this is one of the very important public policy points involved in having a reasonable limitation on Keogh plans instead of the limitation we have had now for the past 12 years. That is, we have been forcing people to incorporate in order to achieve the tax benefits they can get through incorporation, rather than permitting them the natural way in which they would do business, namely, as a proprietorship or partnership. As long as we have the kind of malpractice insurance we have now, there is no other reason for the professional corporation. I suspect, then that they want to take advantage of very generous deductions available to corporate officers. This increase in permitted Keogh deductions is far preferable. We need the symmetry of this in the law.

I should like to support the position enunciated by the gentleman from Pennsylvania and the gentlewoman from Michigan.

Mr. SCHNEEBELI. To proceed further with this comparison, were we to limit the self-employed individual to $2,500 a year—and we are talking about the gas station operator as well as the professional—we would just drive them into corporations. This $2,500 limit was established in 1962. Since that time the income of this class of people has increased by 88 percent.

To get this thing into perspective, the present pension laws cost the Treasury $4 billion.

This bill adds another $460 million in Treasury loss, and of this $460 million there is $175 million which could be attributed to the increase from $2,500 to $7,500 for the self-employed.

Because of all the facts recited it would seem this House should agree that the amendment offered by the gentleman from Wisconsin should be voted down.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. SCHNEEBELI. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, I would like to ask the gentleman, since he is the ranking minority member on the committee, why it is that the very first tax bill that we come out with in this session of the Congress, after all the pressure that has been put on for some general tax reform and loophole closing and relief for the average person, especially on the payroll tax that has gone up again this year—after all the talk about tax reform during the past several years, that the very first thing we bring out which provides relief for the taxpayer, is for those in the higher tax brackets.

Mr. SCHNEEBELI. We have incorporated a major provision in this legislation—known as IRA—which allows the fellow who works for the gas station owner and is not covered by a pension plan to contribute up to $1,500 to a retirement account and receive a deduction for it. This is something new and takes care of the very limited income people. This was proposed by the administration and is a provision of which the committee is very proud.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

(On request of Mr. Seiberling, and by unanimous consent, Mr. Schneebeli was allowed to proceed for 2 additional minutes.)

Mr. SCHNEEBELI. It allows the individual who works for the gas station owner—just the ordinary attendant or a farmer to provide for his retirement via the tax system. It will cost about $350 million to have this IRA approach incorporated into the bill. It is for the class of people the gentleman is inquiring about.

Mr. SEIBERLING. I still raise the question as to whether this committee is going to deal with the loophole closing and the tax relief which the average employed person in this country is interested in and whether we will close some of the gaping loopholes now existing in the tax laws.

Mr. SCHNEEBELI. As the gentleman knows, currently we are having executive sessions on windfall profits taxes. Following that it is my understanding the majority leaders on our committee plan to begin work on general tax reform. That is my understanding. We are discussing tax reform at the present time which will bring back to the Treasury several billion dollars.

Mr. SEIBERLING. Does that include relief for the people paying the payroll tax? Will that subject be included in this tax reform also?

Mr. SCHNEEBELI. I defer to the chairman of the committee in that regard.

Mr. ULLMAN. Mr. Chairman, I move to strike the requisite number of words.

First, in response to the question of my friend, this bill is one that does contain a great deal of tax reform. We have set limits on corporate plans and this provision for the self-employed improves the equity of the law.

Reform sometimes includes increased benefits. What we have to do is to bring into balance as much as we can the tax treatment for the self-employed as compared to the corporate community, and this provision in the bill is an effort in this direction. We are proceeding on tax reform. We are doing it now on an energy bill, as my friend the gentleman from Pennsylvania said, and we will be proceeding forthwith to general tax reform. There will be major tax reform before the House this year.

But let me go on with the subject and point out that the self-employed pension provisions do involve tough antidiscrimination rules. The plan cannot be for just the doctor or the lawyer. The plan has to be for all the employees in the business organization. Let me read into the Record percentages which indicate that doctors and lawyers are not the only ones involved of the self-employed under these plans. 33.8 percent were physicians, surgeons, optometrists, and other persons in medical organizations; then the dentists have 8.3 percent and the legal services have 8.9 percent; the accounting and auditing services have 2.8 percent; finance, insurance and real estate, 5.6 percent; agriculture, 9.2 percent of the total; retail and wholesale trade and manufacturing, 15.2 percent; ministers and teachers have less than 1 percent; and all others have 15.9 percent—so these plans are spread across the whole community of self-employment in this Nation. It has been a very basic part of our business life.

It seems to me this is a most equitable treatment and one that deserves the support of the House. I hope we will vote down the amendment.

Mr. DANIELSON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am in support of this bill.

I have a few questions and I will pose them to the gentleman from Oregon (Mr. Ullman) after stating a hypothetical case.

My concern is that we are permitting a self-employed person to set aside $7,500 a year as a maximum figure, but another person who is not self-employed, I will call him a wage earner for reference, is only allowed to set aside $1,500 a year.

The thrust of my question is: What equity would there be in permitting the self-employed person to set aside $7,500, while the one who is not self-employed is limited to $1,500?

Let me give the Members a hypothetical case. We have a couple of nearly identical twins, Abel and Mabel, that go to medical school, that graduate with honors.

Abel joins the Kiwanis Club. He is really quite a guy and the first thing you know he has patients coming in so fast he cannot handle them.

Mabel, on the other hand is a medical genius, but she cannot attract trade. She is starving to death down the street.

Abel says to Mabel, "Come work for me. You are a wage earner. You are not self-employed. I will give you $50,000 a year."

So Mabel goes to work for Abel. Abel has left only $50,000 per year after his practice to set aside $7,500 for his pension; but his dear identical twin sister, Mabel, who is not self-employed, can only set aside $1,500 per year for her pension.

So what happens? At retirement time Abel gets $81,000 per year, but Mabel gets only $13,000 per year.

Mrs. GRIFFITHS. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. I yield to the gentlewoman from Michigan.

Mrs. GRIFFITHS. The gentleman has stated here if Abel sets aside $7,500, he has to cover all his employees in the plan, so he has to take care of her. He has $80,000 to cover her $1,500.

Mr. DANIELSON. I left one link out of my presentation. Two days after Mabel goes to work for Abel, she went down the street and went to work for someone otherwise not covered; but the figures remain the same. However, since she is not self-employed, she is restricted to $1,500, but Abel gets $7,500 toward the $81,000.

Mrs. GRIFFITHS. But Abel gets to cover all his employees. He does not get the benefit of $7,500.

Mr. DANIELSON. But he has no other employees.

Mrs. GRIFFITHS. He can still have $1,500, but most people do not set aside that much.

Mr. DANIELSON. The point is that it is a constitutional classification. Is this a proper classification? Is it proper under our laws to permit a self-employed person to have a tax deferment on $7,500 a year, while a person not self-employed has a tax deferment on only $1,500 per year?

Mrs. GRIFFITHS. How about a corporate president that gets $25,000, does that bother the gentleman?

Mr. DANIELSON. That bothers me, too; but at the moment I am bothered about the reason why this person gets $1,500 and the other person gets $7,500.

Mrs. GRIFFITHS. Because the plan is on $7,500, that covers everybody.

Mr. DANIELSON. I respectfully submit it is not a constitutional classification and I hope that the committee in conference will give serious consideration to this.

Mr. GIBBONS. Mr. Chairman, will the gentleman yield?

Mr. DANIELSON. Mr. Chairman, I yield to the gentleman from Florida.

Mr. GIBBONS. Mr. Chairman. I do not know where the gentleman got his illustration from, and I respect the gentleman's right to use it, but the facts are not correct in the illustration.

If Mabel went to work for Abel——

Mr. DANIELSON. Mabel left. They could not get along.

Mr. GIBBONS. The first day she went to work for him, she was covered by a plan. He had to contribute to the fund on a nondiscriminatory basis the same amount for her that he contributed for himself on a percentage basis; the same percentage. He could not discriminate against her. She was covered by the plan on the first day, and that is far more protection for her than she would get if she went to work for a corporate employer.

She may have to work for a corporate employer for 10 years before she would be covered by the plan, so I do not know where the illustration came from, but the facts are wrong.

Mr. DANIELSON. Mr. Chairman, I respectfully submit that there are some non-self-employed people, some wage earners not covered by a pension plan, who would wish to set aside $7,500 per year, but who would be limited to $1,500. My contention is simply this: I am going to support the bill, but everyone should have the same right to set aside a pension.

Mr. YOUNG of Illinois. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to rise in support of the provisions of title II which pertain to some very forward looking improvements in the retirement system that we are developing in this country to assist individuals to develop voluntary types of individual retirement programs and to improve H.R. 10 retirement plans.

No one claims that our various types of deferred compensation programs are perfect. Of course, the very fact that we are making these amendments is an acknowledgment that we are trying to improve profit sharing plans and pension programs and various types of retirement programs such as H.R. 10 and also this new innovation, the individual retirement account.

Mr. Chairman, I think that the Ways and Means Committee deserves a great deal of credit for offering for our consideration improved and new benefits for self employed and wage earners which will bring greater equity into the retirement situation. I want to point out that even with the proposed increase in deductible contributions to H.R. 10 plans, I refer to the $7,500 maximum deduction, there are still many advantages to a corporate type of profit-sharing plan or pension plan as compared to H.R. 10 plans.

So, I support the purpose of these amendments in this legislation. These amendments do help to bring the H.R. 10 plans a little closer to broader benefits permitted now to deferred compensation programs authorized for corporations. Let us not apologize for the type of deferred compensation programs that Congress has already enacted with respect to corporations. As a matter of fact, they are very salutory types of programs, and we want to continue them. They encourage savings and capital formation which is the lifeblood of the free enterprise system. We want voluntary retirement programs that encourage thrift and initiative.

Mr. Chairman, I also point out with respect to the new individual retirement accounts, that these accounts will be inferior in important respects to H.R. 10 plans. H.R. 10 plans continue to be inferior in many important respects to corporate deferred compensation plans. This legislation is starting on the road to providing some equity to the wage earner, the self-employed person, since both can take advantage of the tax savings provisions for establishment of individual retirement accounts.

This proposal as afforded by the Ways and Means Committee is a good proposal. It should not be crippled by the elimination of the higher benefits for H.R. 10 plans. This legislation is an encouragement to the self-employed people of this country. It gives the self-employed middle income person a more equitable treatment and it also

gives an individual who is not a part of any qualified plan an opportunity to put away some money for his old age instead of having to rely upon social security and the Government to take care of him.

We are talking about the taxpayers' money; he has earned it, and he ought to be allowed to defer the taxes on some of it to a later time the same way the law permits this to corporate employees.

Mr. MAYNE. Mr. Chairman, I move to strike the last word.

(Mr. Mayne asked and was given permission to revise and extend his remarks.)

Mr. MAYNE. Mr. Chairman, I rise in opposition to the Reuss amendment. Ladies and gentlemen of the House, there are many sections in this bill which are designed to provide people who work for wages with legitimate tax relief. I am for those provisions, and the bill's other needed pension reforms, many of them similar to earlier pension reform measures I had cosponsored.

I commend the House Ways and Means Committee for including them in the bill. However, the Reuss amendment now before us will deprive the independent businessman, the small businessmen in the small towns of America, of having adequate opportunity to more equitably and properly participate in legitimate tax relief.

Up until recent years farmers have not enjoyed enough earned income to be very concerned about income tax liability to any great extent. But with farm income having finally reached more adequate levels, there is no question but what this amendment will also prevent the farmers of the country from being able to participate in this type of legitimate tax relief to the extent to which they should be entitled.

I do not feel that we should support such an amendment. We should retain in this bill those provisions which at long last allow some relief to the great middle class of this country which has so long had to bear the principal tax burden. They are the forgotten people of this country, the self-employed and the small businessmen. It is about time we did something for them.

Mr. Chairman, I believe the committee bill will help provide this needed relief, and that this amendment, by refusing to raise the $2,500 limitation on tax deductibility of contributions to retirement plans, will be very destructive to the interests of the great middle classes, and, more particularly, the small businessmen and the farmers of America.

Mr. DENNIS. Mr. Chairman, will the gentleman yield?

Mr. MAYNE. I yield to the gentleman from Indiana.

Mr. DENNIS. Mr. Chairman, I would like to associate myself with the remarks of the gentleman in the well.

While I am on my feet, I would like to take the opportunity especially to compliment the gentlewoman from Michigan for her very fine presentation. I think we will miss her around here in the future when these matters come before the House.

Mr. DON H. CLAUSEN. Mr. Chairman, will the gentleman yield?

Mr. MAYNE. I yield to the gentleman from California.

(Mr. Don H. Clausen asked and was given permission to revise and extend his remarks.)

Mr. DON H. CLAUSEN. Mr. Chairman, I rise in strong opposition to the Reuss amendment which would strip from the bill the increase in benefits for Keogh plan programs set up by the self-employed, by small businessmen and by farmers and others.

I am at a loss to understand why, when we are making the effort to upgrade pension programs generally, we should not improve at the same time the individual, self-help retirement programs.

Undoubtedly, the majority of the House will recognize the contradiction of encouraging some to improve their retirement programs while discouraging others that would occur if the Reuss amendment is adopted. I trust it will not be.

While we are constantly doing things to improve the lot of those who work for large corporations or those who receive benefits because of union efforts, we should also seek to help small businessmen and their employees, and farmers, and their employees.

The provisions of the pension bill will help small businessmen attract and reward employees through improved fringe benefits just as larger corporations can do with their larger resources.

Finally, any improvement in the incentives to plan for retirement will increase the number of people not totally dependent upon social security for their retirement annuity. This will permit them to be self-supporting more easily and reduce the number of elderly who are not self-sufficient and dependent upon welfare programs.

I hope the Reuss amendment will be defeated, Mr. Chairman.

Mr. MAYNE. Mr. Chairman, the Reuss amendment would strike those provisions of title II of the pension reform bill which are designed to provide some measure of legitimate tax relief to the middle class which has too often been ignored when the House Ways and Means Committee hands out tax breaks. The amendment would seriously affect some 30 million self-employed persons, and their employees, most of whom are not now covered by any retirement program.

The Self-Employed Individuals Retirement Act of 1962, H.R. 10, enables self-employed individuals—such as farmers, owners of unincorporated businesses, professional people and partners in partnerships—to defer tax liability on as much as $2,500 or 10 percent of their annual adjusted gross income, whichever is the lesser, when set aside for retirement purposes, in much the same way as these persons could do for their employees under the then-existing law. That legislation was intended to remove discrimination in tax treatment against self-employed persons who wanted to accumulate savings for retirement.

Many self-employed individuals have complied with the H.R. 10 requirements and built up savings for their retirement. By 1968, 246,000 individual taxpayers had taken advantage of Keogh plan deductions.

While H.R. 10 has often been described as being of particular benefit to professional persons, I would like to point out that many farmers have taken the opportunity to set aside for their retirement through Keogh plans, and they would like to increase their participation. More than 20,000 farmers took Keogh plan contribution deductions in 1968, the first year tax returns were surveyed by occupation. That is about 10 percent of the total of those who did.

Thus, there were more farmers than there were lawyers or accountants or dentists or persons in finance, insurance, and real estate who utilized the Keogh plans by 1968.

In the 5 years since 1968, the number of taxpayers utilizing these Keogh plan tax deductions has increased by about 63 percent, to an estimated 402,600 individuals for this last tax year of 1973. The esti-

mated total of $599,500,000 in contributions toward retirement plans qualified for tax deduction represented a tax saving for these self-employed individuals, whether farmers, small businessmen, or professional men and women, of some $214 million for the tax year 1973.

Many, many more self-employed Americans are eligible to set up Keogh retirement plans and take the deferral of tax on their contributions until the year they draw their retirement benefit, and they should be encouraged to do so.

I think it is in the national interest to insure this participation by the middle-class American self-employed businessman or farmer in building adequate retirement funds so that he may face his golden years in comfort and without hardship, and without having to rely entirely upon relatively limited social security benefits.

In order to obtain greater participation, however, we must remove inequities in the present law. The steady inflation since enactment of the Self-Employed Individuals Retirement Act in 1962 has made many retirement plans no longer adequate. Many plan participants argue that the $2,500 or 10 percent of earned income maximum is too low to provide an adequate accumulation of funds for retirement. Furthermore, the present low ceiling discriminates against the self-employed compared with corporate executives who are participating in regular corporate pension plans which have no effective tax-deductible limits under the existing law. Because of this inequity, in recent years many self-employed individuals have avoided the limited H.R. 10 plans by incorporating for the sole purpose of setting up qualified corporate pension plans for themselves.

President Nixon early recognized the need to make the Keogh plan more equitable. Many of his proposed reforms were incorporated by the Senate in the pension reform legislation it passed and by the House Ways and Means Committee in title II of the present bill.

The bill raises the existing deduction limitations for H.R. 10 plan contributions from 10 percent of self-employment income up to a $2,500 annual maximum, to a new maximum of 15 percent of income or $7,500 whichever is the lower. A minimum of $750 per year may be deducted without regard to the percentage limitation. For the purposes of the H.R. 10 antidiscrimination test, only the first $100,000 in compensation is to be considered in calculating the contribution percentage. Thus a self-employed plan participant using the full $7,500 contribution allowance would have to make a pension contribution in behalf of all qualified employees equal to 7.5 percent of their compensation.

Without this provision, the percentage contribution of a self-employed owner taking the $7,500 maximum would progressively decline as his income rose above $100,000, thus undermining the protection provided his employees by the antidiscrimination requirement.

The bill further reduces the inequities in the tax-treatment of self-employed individuals as compared to corporate-employees, by providing overall limitations on the accumulation of funds in qualified pension trusts out of tax-sheltered dollars, in general providing that a qualified pension trust may not provide a defined benefit in excess of $75,000 a year or 100 percent of the employee's average high-3 years of compensation. Thus there will be less incentive for self-employed individuals to incorporate. At the same time, the limitations provided

by the House Ways and Means Committee are sufficiently generous to accommodate the vast majority of employees covered by Sears employee-retirement plans and similar plans which might have been endangered by the limitation proposed in the pension bill previously passed by the Senate.

The Reuss amendment would unwisely strike this forward step, these important improvements provided by the House Ways and Means Committee. It would preserve existing inequities in the law. It unfairly discriminates against the burdened middle class taxpayer, self-employed farmers and small businessmen whose continued vigor and independence are vital to the American system and way of life. I respectfully call upon everyone in this Chamber to join in decisively rejecting this unwise amendment.

The CHAIRMAN. The question is on the amendments, offered by the gentleman from Wisconsin (Mr. Reuss).

The amendments were rejected.

AMENDMENT OFFERED BY MR. CONABLE

Mr. CONABLE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Conable: Page 280, after the period in line 21, insert:

Section 404(e) is amended by adding at the end thereof the following new paragraph:

"(5) Cost-of-living adjustment.—The Secretary or his delegate shall adjust annually the $7,500 amount in paragraph (1), in paragraph (2)(A), in section 401(e), and in section 1379(b)(1)(B) for increases in the cost of living in accordance with regulations prescribed by the Secretary or his delegate. Such regulations shall provide for adjustment procedures which are similar to the procedures used to adjust primary insurance amounts under section 215(i)(2)(A) of the Social Security Act. For purposes of this paragraph, the base period taken into account shall be the calendar quarter beginning October 1, 1973."

Mr. CONABLE. Mr. Chairman, I shall not take 5 minutes to speak in support of this amendment. It is obvious what this amendment does.

It takes the $7,500 maximum provided by the bill on the Keogh-type plan and makes it subject to adjustment for cost of living. We have a similar cost-of-living evaluator elsewhere in the bill.

For instance, with respect to the $75,000 maximum defined benefit limitation, included in the provision relating to corporation pensions, we provide for a cost-of-living adjustment which would permit an upward movement of this already generous figure.

There are many people who are unhappy that we have imposed such a liberal corporate limitation, but we have, and it seems to me entirely appropriate if we are going to do it with respect to corporate pensions, we should also do it with respect to the Keogh-type plan.

The Keogh-type plan has not been changed for 12 years. It may be some time before it is changed again. We should take into account at this time the probability that an upward adjustment would be in keeping with the equities granted to those who serve under corporate pension plans.

Mr. SCHNEEBELI. Will the gentleman yield?

Mr. CONABLE. I yield to the gentleman.

Mr. SCHNEEBELI. Mr. Chairman, I support the gentleman from New York in his amendment regarding the cost-of-living bonus for Keogh

plans, because in two or three other areas of this legislation a cost-of-living amendment has been incorporated. I think the gentleman is entirely right, and I ask my colleagues to support his amendment.

Mr. CONABLE. I thank my colleague.

I think one important thing to keep in mind with respect to the Keogh-type plans is that if we have a permissible maximum figure compensating for the complications a Keogh plan imposes on self-employed people, they will have the incentive to go into this type of plan instead of into IRA and in the process they will, of course, have to cover their own employees.

The purposes of this bill generally is to extend the benefits of tax deferral for retirement purposes and to extend the coverage to more people than are presently covered under our piecemeal voluntary retirement systems.

Mr. BURLESON of Texas. Will the gentleman yield?

Mr. CONABLE. I yield to the gentleman.

Mr. BURLESON of Texas. I wish to associate myself with the proposal of the gentleman from New York. It seems to me this is the pattern followed in the retirement plan for Federal employees, including Members of Congress. The cost-of-living provision in the Federal retirement program provides for increases commensurate with increases in the cost-of-living, whenever there has been at least 3-percent increase in the Consumer Price Index.

This is a modest approach in view of the current trends and the anticipated situation in the future.

Mr. Chairman. I think the proposal offered by the gentleman from New York (Mr. Conable) is a wise proposal, is just, and is equitable under this system.

Mr. CONABLE. Mr. Chairman, I thank the gentleman from Texas.

Mr. ARCHER. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Texas.

Mr. ARCHER. Mr. Chairman, I would like to compliment the gentleman from New York on offering his amendment. I think it is a very responsible amendment, and I for one would like to associate myself with the amendment.

Mr. CONABLE. Mr. Chairman, I urge support of the amendment that I have offered.

Mr. ULLMAN. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from New York (Mr. Conable) and I move to strike the requisite number of words.

Mr. Chairman, the committee worked its will on this matter in a very careful way. We considered all aspects of the problem. In this instance we are increasing the maximum self-employed contribution from $2,500 to $7,500. The provisions where we did put the cost-of-living feature in were those restricting the corporate outer limits. It seems to me that this threefold increase is enough for now. If further increases are needed in the future Congress can consider the provisions again at some subsequent date. It also seems to me that it would be wise for the House not to extend the cost-of-living factor any further because if we do, then we ought to extend it to the $1,500 provision. So let us leave it in the responsible way in which the committee brought it to the floor, and pass it, and consider this matter further at another time if this becomes necessary.

Mr. REUSS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment offered by the gentleman from New York (Mr. Conable).

Mr. Chairman, I will not take the full 5 minutes, but it is odd here to hear four or five members of the tax-writing Committee on Ways and Means trying to devise new ways to give away the revenues. If we adopt this amendment on top of the $7,500 preference which is in there for those Keogh bill beneficiaries who make $50,000 a year, we would be adding in this year of 8-percent inflation, another 4-percent preference, for a total of $11,500.

Nobody talks about a cost-of-living break for the average hard-pressed American worker earning $11,000, $12,000, $14,000 or $15,000 a year, who is being belabored by ever-increasing payroll taxes imposed upon him under a closed rule from the Committee on Ways and Means.

Mr. Chairman, I hope that this amendment will be overwhelmingly voted down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. Conable).

The question was taken: and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. ANNUNZIO. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 183, noes 206, answered "present" 1, not voting 41, as follows:

[ROLL NO. 54]

AYES—183

Abdnor
Anderson, Ill.
Archer
Arends
Armstrong
Ashley
Bafalis
Bauman
Beard
Bell
Biester
Blackburn
Bray
Broomfield
Brotzman
Brown, Mich.
Brown, Ohio
Broyhill, Va.
Buchanan
Burgener
Burleson, Tex.
Butler
Byron
Carter
Cederberg
Chappell
Clancy
Clausen, Don H.
Clawson, Del.
Cleveland
Cochran
Cohen
Collier
Collins, Tex.
Conable
Conlan
Conte
Coughlin
Cronin
Daniel, Dan
Daniel, Robert W., Jr.
Davis, Ga.
Derwinski
Dickinson
Downing
Duncan
Edwards, Ala.
Erlenborn
Esch
Eshleman
Fish
Frenzel
Frey
Froehlich
Fuqua
Gilman
Goldwater
Goodling
Gross
Grover
Gubser
Gude
Haley
Hammerschmidt
Hanrahan
Hansen, Idaho
Harsha
Hastings
Heckler, Mass.
Heinz
Henderson
Hillis
Hinshaw
Hogan
Horton
Hosmer
Huber
Hudnut
Hutchinson
Jarman
Johnson, Colo.
Johnson, Pa.
Kemp
Ketchum
King
Landgrebe
Leggett
Lent
Lott
Lujan
McClory
McCloskey
McCollister

McDade
McEwen
McKinney
Madigan
Mallary
Mann
Martin, N.C.
Mathias, Calif.
Mathis, Ga.
Milford
Minshall, Ohio
Mitchell, N.Y.
Mizell
Montgomery
Moorhead, Calif.
Myers
Nelsen
O'Brien
Parris
Pettis
Peyser
Poage
Price, Tex.
Pritchard
Quie
Quillen
Railsback
Regula
Rhodes
Rinaldo
Robinson, Va.
Robison, N.Y.
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rousselot
Roy
Runnels
Ruppe
Ruth
Sandman
Sarasin
Satterfield
Scherle
Schneebeli
Shoup
Shriver
Shuster
Skubitz
Smith, N.Y.
Snyder
Spence
Stanton, J. William
Steele
Steelman
Steiger, Ariz.
Steiger, Wis.
Stratton
Symms
Talcott
Taylor, Mo.
Teague
Thomson, Wis.
Thone
Towell, Nev.
Treen
Van Deerlin
Vander Jagt
Veysey
Walsh
Wampler
Ware
White
Whitehurst
Widnall
Wiggins
Wilson, Bob
Wilson, Charles, Tex.
Winn
Wolff
Wyatt
Wydler
Wyman
Young, Alaska
Young, Fla.
Young, Ill.
Young, S.C.
Zion
Zwach

NOES—206

Abzug
Adams
Addabbo
Alexander
Anderson, Calif.
Andrews, N. Dak.
Annunzio
Aspin
Badillo
Barrett
Bennett
Bergland
Bevill
Biaggi
Bingham
Blatnik
Boggs
Boland
Bolling
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brooks
Brown, Calif.
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Casey, Tex.
Chisholm
Clark
Clay
Collins, Ill.
Conyers
Corman
Cotter
Culver
Daniels, Dominick V.
Danielson
de la Garza
Delaney
Dellums
Denholm
Dennis
Dent
Diggs
Dingell
Donohue
Dorn
Drinan
Dulski
du Pont
Eckhardt
Edwards, Calif.
Eilberg
Evans, Colo.
Evins, Tenn.
Fascell
Findley
Flood
Flowers
Flynt
Ford
Forsythe
Fountain
Fraser
Fulton
Gaydos
Gettys
Giaimo
Gibbons
Ginn
Gonzalez
Grasso
Green, Pa.
Griffiths
Gunter
Guyer
Hamilton
Hanley
Hanna
Hansen, Wash.
Harrington
Hawkins
Hays
Hébert
Hechler, W. Va.
Helstoski
Hicks
Holifield
Holt
Holtzman
Howard
Hungate
Hunt
Ichord
Johnson, Calif.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jordan

Karth
Kastenmeier
Kazen
Koch
Kyros
Landrum
Latta
Lehman
Long, La.
Long, Md.
McCormack
McFall
McKay
Macdonald
Madden
Mahon
Maraziti
Martin, Nebr.
Matsunaga
Mayne
Mazzoli
Meeds
Melcher
Metcalfe
Mezvinsky
Miller
Minish
Mink
Mitchell, Md.
Moakley
Mollohan
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murphy, N.Y.
Murtha
Natcher
Nedzi
Nix
Obey
O'Hara
Owens
Passman
Patman
Patten
Pepper
Perkins
Pickle
Pike
Podell
Preyer
Price, Ill.
Randall
Rangel
Rarick
Rees
Reid
Reuss
Riegle
Rodino
Rooney, Pa.
Rosenthal
Roush
Roybal
Ryan
St Germain
Sarbanes
Seiberling
Shipley
Sikes
Slack
Smith, Iowa
Staggers
Stanton, James V.
Stark
Steed
Stephens
Stubblefield
Stuckey
Studds
Symington
Taylor, N.C.
Thompson, N.J.
Thornton
Tiernan
Udall
Ullman
Vander Veen
Vanik
Vigorito
Waggonner
Waldie
Whalen
Whitten
Williams
Wilson, Charles H., Calif.
Wright
Wylie
Yates
Yatron
Young, Ga.
Young, Tex.
Zablocki

ANSWERED "PRESENT"—1

Sebelius

NOT VOTING—41

Andrews, N.C.
Ashbrook
Baker
Brasco
Broyhill, N.C.
Burke, Fla.
Burton
Camp
Carey, N.Y.
Carney, Ohio
Chamberlain
Crane
Davis, S.C.
Davis, Wis.
Dellenback
Devine
Fisher
Foley
Frelinghuysen
Gray
Green, Oreg.
Jones, Tenn.
Kluczynski
Kuykendall
Litton
McSpadden
Mailliard
Michel
Mills
Moss
Nichols
O'Neill
Powell, Ohio
Roberts
Rooney, N.Y.
Rose
Rostenkowski
Schroeder
Sisk
Stokes
Sullivan

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. LONG OF LOUISIANA

Mr. LONG of Louisiana. Mr. Chairman, I offer an amendment.

The Clerk reads as follows:

Amendment offered by Mr. Long of Louisiana: Pages 280, 281, and 288, strike out "$7,500" and insert "$6,000".

[Mr. LONG of Louisiana addressed the Committee.]

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. LONG of Louisiana. I yield to the gentleman from Ohio.

(Mr. Vanik asked and was given permission to revise and extend his remarks.)

Mr. VANIK. Mr. Chairman, I wish to commend our colleague. I think he is offering a very fine and worthy amendment, and I would certainly like to support it.

Mr. Chairman, I will support the amendment of the gentleman from Louisiana (Mr. Long) to restrict the increase in the level of tax deductible contributions to H.R. 10 plans to $6,000. This is not the time or the place for the committee's proposed 300 percent increase in this special tax program, which benefits relatively few members of our society.

In 1962, the Congress passed H.R. 10, sponsored by our former colleague, Congressman Keogh. This act, known as the Self-Employed Retirement Act of 1962, provided that every self-employed individual can contribute for himself each year a total of 10 percent of his "earned income" for that year or $2,500, whichever is less. To the extent of this limit, the contribution is deductible by him in determining adjusted gross income. His contribution to a plan must be out of his earned income derived from his business.

The bill before us today increases the maximum allowable deductible contribution by the self-employed to 15 percent of earned income up to $7,500 a year.

In other words, at least part of the formula has been increased by 300 percent.

I have no objection to recognizing the impact of inflation by modifying the Keogh plan to adjust it to the cost of living. It seems to me, however, that this change would be better handled in the tax reform efforts of the Ways and Means Committee than hastily incorporated in the pension legislation. These preferences, once granted in the pension bill, will be almost impossible to modify in later tax reform legislation.

There is no question that a 300-percent increase is excessive. Since 1962, the cost of living has gone up about 50 percent. Since 1962, social security benefits have been increased approximately 104 percent. Perhaps self-employment contributions should go up as much as social security benefits—but there is absolutely no justification for them to go up twice as much as social security benefits.

The limited effect of the Keogh plan can be seen by the fact that 45 percent of the plan's benefits go to 1 percent of the Nation's taxpayers. It has been calculated that setting aside $7,500 per year, for 30 years at a 6-percent rate of interest, would accumulate, at the end of that time, $592,000. This would provide a lifetime annuity of $64,000 per year at the retirement age of 65. I question whether the demands on the Federal Treasury and the tax code can justify this type of tax subsidy for such a limited number of persons.

I find excessive release of limited tax revenues to this group of citizens incomprehensible, when the Congress consistently refuses to provide tax reform and tax relief to those who need it most. For about an hour last month, the Senate adopted an amendment to increase the personal exemption from $750 to $850. That amendment would have helped cut the impact of the recession by increasing consumer spend-

ing. The tax savings from the provision would just match the rate of inflation since the personal exemption was increased in 1971. That type of a tax break makes some sense.

The provision before the committee—to triple the maximum tax deductible contribution for savings—makes no sense. It does not stimulate consumer purchasing power—in fact it could have the opposite effect. The size of the increase has no relation to the rate of inflation.

Supporters of the Keogh plan have argued, quite rightly, that benefits under the plan are not as favorable as other pension plans for corporate executives. Many corporate executives are able to take advantage of tax law provisions that permit enormous retirement tax deduction. As a result, many professionals—doctors, accountants, lawyers—have been leaving the Keogh plan and incorporating to take advantage of the better provisions available to people in corporations.

But an overly generous tax provision for corporate executives does not justify excessive increase in the Keogh plan: that argument is the double pickpocket argument—the argument that two wrongs make a right. I would hope that during the tax reform hearings we could deal with questions of corporate retirement and special treatment for executives of closely held corporations. We should seek to close that corporate tax loophole rather than expand it to new areas.

Again, I urge adoption of the amendment limiting the increase in Keogh contributions to $6,000.

WHO BENEFITS FROM NET EXCLUSION OF PENSION CONTRIBUTIONS IN PLANS FOR SELF-EMPLOYED (KEOGH PLANS)

[Calendar year 1971]

Adjusted gross income class	Number of returns per income class	Estimated distribution (millions)	Tax savings in dollars per return
0 to $3,000	18,063,181		
$3,000 to $5,000	10,238,897	$7	$0.68
$5,000 to $7,000	9,410,802	10	1.06
$7,000 to $10,000	12,901,228	13	1.01
$10,000 to $15,000	14,104,611	22	1.56
$15,000 to $20,000	5,541,347	18	3.25
$20,000 to $50,000	3,596,348	96	26.69
$50,000 to $100,000	351,669	71	201.88
$100,000 and up	77,899	13	166.88

Mr. Ullman. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am very reluctant to oppose the amendment offered by my good friend, the gentleman from Louisiana, but the fact of the matter is that this issue was very carefully gone into by the committee.

A lawyer working for a corporation could get $25,000 set aside, depending of course upon his salary and upon the corporate plan. A lawyer or an engineer working for himself, we say, should get $7,500. This does not take away the incentive to go to work for a corporation, because he could get much more as a corporate executive in retirement, but at least it does give him some incentive to remain self-employed if that is his desire.

In terms of revenue loss, the difference between $6,000 and $7,500 is $5 million in revenue. There is only $5 million of cost involved. The committee went into the cost of the committee provision and alternatives very carefully.

In my judgment, this is a matter on which the committee position is completely sound. The figure of $7,500 is a sound figure.

Mr. Chairman, I hope that the Members of the House will stay with the committee and stay with that figure.

Mr. SCHNEEBELI. Mr. Chairman, I rise in opposition to the amendment.

I will merely state that I support the position of the gentleman from Oregon. If we limit self-employed contributions to $6,000, it will represent less than 25 percent of what we allowed for employee plans, which is $25,000 a year in the case of defined contribution plans.

It seems to me the self-employed who have the same capacity and needs as salaried employees should be allowed at least 25 percent to 30 percent of what they are allowed.

We have heard the other arguments previously from the gentlewoman from Michigan and the gentleman from Oregon, and I reiterate these arguments.

Mr. Chairman, $7,500 is a reasonable figure, and I urge the Members should stay with that figure.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana (Mr. Long).

RECORDED VOTE

Mr. REUSS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 63, noes 323, answered "present" 1, not voting 44, as follows:

[ROLL No. 55]

AYES—63

Abzug	Edwards, Calif.	Nix
Adams	Eilberg	Passman
Addabbo	Flowers	Pickle
Anderson, Calif.	Fraser	Quie
Aspin	Green, Pa.	Rangel
Badillo	Hechler, W. Va.	Reuss
Barrett	Holtzman	Riegle
Bevill	Ichord	Rosenthal
Bingham	Johnson, Calif.	Ryan
Boggs	Kastenmeier	St Germain
Bolling	Koch	Sarbanes
Brademas	Kyros	Seiberling
Breaux	Lehman	Stanton, James V.
Brown, Calif.	Long, La.	Stark
Burke, Mass.	Long, Md.	Studds
Chisholm	McFall	Tiernan
Clay	Madden	Vanik
Collins, Ill.	Metcalfe	Waldie
Dellums	Mitchell, Md.	Yates
Diggs	Moakley	Young, Ga.
Eckhardt	Nelsen	Zwach

NOES—323

Abdnor	Annunzio	Ashbrook
Alexander	Archer	Ashley
Anderson, Ill.	Arends	Bafalis
Andrews, N. Dak.	Armstrong	Bauman

Beard
Bell
Bennett
Bergland
Biaggi
Biester
Blackburn
Blatnik
Boland
Bowen
Bray
Breckinridge
Brinkley
Brooks
Broomfield
Brotzman
Brown, Mich.
Brown, Ohio
Broyhill, Va.
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burleson, Tex.
Burlison, Mo.
Butler
Byron
Carter
Casey, Tex.
Cederberg
Chappell
Clancy
Clark
Clausen, Don H.
Clawson, Del.
Cleveland
Cochran
Cohen
Collier
Collins, Tex.
Conable
Conlan
Conte
Conyers
Corman
Cotter
Coughlin
Cronin
Culver
Daniel, Dan
Daniel, Robert W., Jr.
Daniels, Dominick V.
Danielson
Davis, Ga.
de la Garza
Delaney
Denholm
Dennis
Dent
Derwinski
Dickinson
Dingell
Donohue
Dorn
Downing
Drinan
Dulski
Duncan
du Pont
Edwards, Ala.
Erlenborn
Esch
Eshleman
Evans, Colo.
Evins, Tenn.
Fascell
Findley
Fish
Flood
Flynt
Ford
Forsythe
Fountain
Frenzel
Frey
Froehlich
Fulton
Fuqua
Gaydos
Gettys
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Grasso
Griffiths
Gross
Grover
Gubser
Gude
Gunter
Guyer
Haley
Hamilton
Hammerschmidt
Hanley
Hanrahan
Hansen, Idaho
Hansen, Wash.
Harrington
Harsha
Hastings
Hawkins
Hays
Hébert
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Hogan
Holifield
Holt
Horton
Hosmer
Howard
Huber
Hudnut
Hungate
Hunt
Hutchinson
Jarman
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jordan
Karth
Kazen
Kemp
Ketchum
King
Landgrebe
Landrum
Latta
Lent
Lott
Lujan
McClory
McCloskey
McCollister
McCormack
McDade
McEwen
McKay
McKinney
Macdonald
Madigan
Mahon
Mallary
Mann
Maraziti
Martin, Nebr
Martin, N.C.
Mathias, Calif.
Mathis, Ga.
Matsunaga
Mayne
Mazzoli
Meeds
Melcher
Mezvinsky
Milford
Miller
Minish
Mink
Minshall, Ohio
Mitchell, N.Y.
Mizell
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers
Natcher
Nedzi
O'Brien

O'Hara
Parris
Patman
Patten
Pepper
Perkins
Pettis
Peyser
Pike
Poage
Podell
Preyer
Price, Ill.
Price, Tex.
Pritchard
Quillen
Railsback
Randall
Rarick
Rees
Regula
Reid
Rhodes
Rinaldo
Robinson, Va.
Robison, N.Y.
Rodino
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, Pa.
Roush
Rousselot
Roy
Roybal
Runnels
Ruppe
Ruth
Sandman
Sarasin
Satterfield
Scherle
Schneebeli
Shipley
Shoup
Shriver
Schuster
Sikes
Skubitz
Slack
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Staggers
Stanton, J. William
Steed
Steele
Steelman
Steiger, Ariz.
Steiger, Wis.
Stephens
Stratton
Stubblefield
Stuckey
Symington
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thompson, N.J.
Thomson, Wis.
Thone
Thornton
Towell, Nev.
Treen
Udall
Ullman
Van Deerlin
Vander Jagt
Vander Veen
Veysey
Vigorito
Waggonner
Walsh
Wampler
Ware
Whalen
White
Whitehurst
Whitten
Widnall
Wiggins
Williams
Wilson, Bob
Wilson, Charles H., Calif.
Wilson, Charles, Tex.
Winn
Wolff
Wright
Wydler
Wylie
Wyman
Yatron
Young, Alaska
Young, Fla.
Young, Ill.
Young, S.C.
Young, Tex.
Zablocki
Zion

ANSWERED "PRESENT"—1

Sebelius

NOT VOTING—44

Andrews, N.C.
Baker
Brasco
Broyhill, N.C.
Burton
Camp
Carey, N.Y.
Carney, Ohio
Chamberlain
Crane
Davis, S.C.
Davis, Wis.
Dellenback
Devine
Fisher
Foley
Frelinghuysen
Gray
Green, Oreg.
Hanna
Jones, Tenn.
Kluczynski
Kuykendall
Leggett
Litton
McSpadden
Mailliard
Michel
Mills
Moss
Nichols
Obey
O'Neill
Owens
Powell, Ohio
Roberts
Rooney, N.Y.
Rose
Rostenkowski
Schroeder
Sisk
Stokes
Sullivan
Wyatt

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mrs. Chisholm. Mr. Chairman, a number of my colleagues intend to offer amendments to the pension legislation which we are considering today. I wish to speak in support of those amendments. Once one begins to study the pension issue it is very clear that there is a critical need for further reform for as the situation stands now those with the greatest need for pension protection and benefits are the least likely to receive it.

If you are low paid, female, a minority, or a part-time worker the chances of ever getting a pension are very poor. If on the other hand, you are a well-paid, white, male professional, you have a pretty good chance of receiving a decent pension.

Let me share with you some of the statistics compiled by the Departments of Labor, HEW and the Treasury and printed in the publication entitled "Coverage and Vesting of Full-time Employees Under Private Retirement Plans: Findings From the April 1972 Survey" done on the 23 million workers covered by our private pension plans. Here are some verbatim quotes of the survey:

The proportion of men covered by a private pension or deferred profit-sharing plan was 45% greater than that for women and the rate for whites was almost 25% greater than that for persons of all other races.

Coverage rates rose sharply with earnings. Although only a fourth of the men earning less than $5,000 a year were covered, about ⅔ths of those earning more had coverage.

Vesting rates varied little by industry. Occupational differences were greater, however: professional and technical workers, managers, officers and craftsmen had the highest vesting rates.

Only 30% of the workers under 25 and 40% of the workers over 60 were covered vs. about ½ of those aged 25–59 who were covered.

Men were more likely to be covered than women (52% and 36% respectively), and whites were more apt to be covered than were persons of all other races (48% and 39% respectively.)

Most of the difference between the coverage rates stems from factors, not associated with either age or tenure. Men have much higher coverage rates—usually by at least 10%—than women of the same age and the same length of service.

Those are pretty grim statistics and they bear out the old adage, "Them what has gets." What it means is you may work for years and may contribute to a pension plan for years and still never qualify for a pension.

The statistics for widows are even more cruel, only 2 percent are currently receiving survivors benefits. Because the vast majority of the elderly are women—11.6 million elderly women versus 8.4 elderly men—and because most elderly women—two-thirds are widows, it seems to me we have a special obligation to see that they are treated fairly and decently. Fortunately both the Ways and Means Committee bill and the Education and Labor bill provide for mandated survivors benefits. A participant may still opt out of the survivors benefit plan if they choose, but the legislation is much stronger now that it provides for opting out rather than opting into the survivors benefit program.

Because of the complexity of pension plans, in the past many participants were not even aware that their survivors were not covered and that they had to specifically request such coverage for their fam-

ilies. According to a questionnaire done on the Senate side, 68 percent of the plans responding indicated that they currently have an optional form of survivors benefit which needed positive selection.

One improvement that would be helpful in the survivors benefit section would be a requirement that both the participant and the survivor would have to approve opting out of the survivors benefit provision. Widows and widowers would thus be assured of knowing their financial status if their spouse should die before they do.

There is another provision of the Education and Labor version of the bill which I believe should be struck. I refer to the provision which requires that the participant and his or her spouse must have been married throughout the 5-year period ending on the annuity starting date or the date of death of the participant. When inquiry was made as to why this requirement was included in the bill it was indicated that it was to protect the pension fund from being drained by survivors who marry participants much older than themselves. It was alleged that this was a problem with the survivors of black lung patients.

This may happen on occasion, but I do not believe that the incidence of May–December weddings is really any of our business. It is a bit of an insult to an older citizen to suggest that we have any business placing restrictions upon whom and when they should marry.

While it might be interesting to take this issue to court and see what kind of opinion Justice Douglas might write I would suggest that the section be deleted before it has to be taken to court. For those who want statistics I secured the following from the Library of Congress. According to the 1970 census for those persons who marry between the ages of 50 and 70 the average difference in age is 6 years.

In instances where it is the first marriage of both spouses, in 2 percent of the marriages the bride is 20 years or younger than the groom.

In instances where it is the first marriage of the bride and the remarriage of the groom, 5.2 percent of the brides are 20 years or younger.

In instances where it is the second marriage for both in only 3.2 percent of the cases is there an age difference of 20 years or more.

And in instances where it is the first marriage of the groom and remarriage for the bride in 0.4 percent of the cases the groom is 20 years younger.

In summary, the incidence of May–December marriages is not large at all. A requirement that the participant and spouse be married for the 5 years before retirement or death is totally unwarranted. It is an insulting restriction upon our senior citizens and could work a real hardship on older "newlyweds."

Part-time workers are also seriously neglected under the legislation before us. This is particularly critical because so many people, especially women and minorities, are employed on a part-time basis.

The majority of these people work part time—not because they want to—but because they must. They have no choice. Part time or seasonal work is the only employment available.

TABLE 34.—PERSONS WHO WORKED DURING 1971, BY FULL AND PART-TIME JOB STATUS

Work experience	Men		Women	
	Negro and other races	White	Negro and other races	White
Total, all workers (thousands)	5,620	50,393	4,766	34,248
Percent	100.0	100.0	100.0	100.0
Year round, full time	59.2	66.8	42.4	41.7
Part year, full time	26.4	20.6	28.8	25.8
27 to 49 weeks	(15.4)	(12.0)	(13.3)	(12.0)
1 to 26 weeks	(11.0)	(8.6)	(15.5)	(14.0)
Partime	14.4	12.6	28.8	32.4

Source: U.S. Department of Labor, Bureau of Labor Statistics.

As you can see from the above chart in 1971 only about three-fifths of all minority men worked full-time year round as compared with two-thirds of the white men.

Even fewer of the working women worked full time, year round: The percentage of both white and nonwhite females working year-round full time was 42.4 percent versus 66.8 percent for white males.

The definitions of part-time and part-year work utilized in the chart are not the same as those set by the Internal Revenue Code: The chart defines part-year work as 6 months or less and part-time work as 34 hours a week or less, as compared to 5 months and 20 hours in the Internal Revenue Code. Since the Department of Labor does not break down part-time work into a 20-hour-a-week category, only an approximation was able to be found for the number of workers with that work pattern.

The closest figures to be found were the following:

PERCENTAGE AND NUMBER OF WORKERS WHO AVERAGED 1 TO 14 HRS. PER WEEK ON THEIR JOB IN 1972

	Percent	Number
White:		
Males	3.6	1,583,000
Females	9.1	2,315,000
Nonwhite:		
Males	4.4	200,000
Females	8.1	284,000

PERCENTAGE AND NUMBER OF WORKERS WHO AVERAGED 1 TO 29 HRS. PER WEEK ON THEIR JOB IN 1972

	Percent	Number
White:		
Males	10.8	4,700,000
Females	26.2	6,689,000
Nonwhite:		
Males	13.4	616,000
Females	23.9	830,000

Using these figures to approximate the number of workers who averaged 1 to 20 hours per week, we can approximate the number of workers who can be excluded from pension plans according to the Internal Revenue Code's definition of part-time and part-year employ-

ees: About 19 percent of the non-white male workers and 15.2 percent of the white male workers, compared to approximately 30 percent of both white and nonwhite female workers.

Retail workers are typical of the workers who are hard hit by the lack of adequate part-time protection.

For example, 1.5 million women are employed as sales clerks in the retail trade—versus 827,000 men—but even of the women who are working full-time only one-fourth were covered by a private pension plan.

Another section of the legislation before us which I believe is highly discriminatory is the provision which requires that no vesting can take place before the age of 25. It works a special hardship upon young people and working women in general.

Let me discuss the latter first. The highest number of working women are in the labor force between the ages of 20 and 24. According to the 1970 census there are some 4,682,580 workers in this category. Most women, 80 percent, have their first child before the age of 25. They then leave the labor market and return to work after their children are fully grown or, as is the case with increasing numbers, when their children reach school age.

There is a provision in the proposed legislation which at first glance would seem to be of great benefit to working women. It is proposed that if an employee has worked for 4 years they can leave work for a period of up to 6 years and then if they return to the same job they will still be able to count those first 4 years as credit towards full vesting.

Unfortunately, because most women have their first child before the age of 25 and no credit for work before the age of 25 is allowed, the majority of our working women will never be able to receive any advantage of the 6-year break in service proposed in today's bill.

The no vesting before 25 years is also highly discriminatory toward blue collar youth. A college student, particularly one who takes any graduate work will not be affected by the 25-year rule because they enter the labor market at a later age but blue collar youth start work at 18. They work 7 years before they can begin to accumulate vesting time. The 25-year provision is justified by the allegation that the youth labor market is very mobile and that young workers change jobs so frequently that it would be expensive and difficult to maintain the necessary employment records. While it is true that youth change jobs more frequently than the population as a whole, it is not as frequently as one might suppose. The Library of Congress reports the following statistics from Special Labor Force Report No. 35 of the U.S. Bureau of Labor Statistics. The statistics are from 1961 but that apparently was the latest date that these figures were prepared in this manner: 23.5 percent of all men aged 18 and 19 changed jobs; 24.8 percent of all men aged 20 to 24 years changed jobs; 22.2 percent of all women aged 18 and 19 changed jobs; and 16.3 percent of all women aged 20 to 24 years changed jobs.

These figures compare with the following labor mobility figures for the total work force: 11.0 percent of all men over the age of 14 changed jobs; and 8.6 percent of all working women over the age of 14 changed jobs.

As you can see, approximately one-fourth of the male workers under 25 and one-fifth of the female workers under 25 do change jobs but the vast majority of these young workers do not. Further, when one compares the mobility of young workers with the 11-percent mobility of the total male work force it seems to me we are being unreasonably discriminatory toward our young workers. I might note for the Members of the House that the National Student Lobby said that this provision "presumes that young people care little about pensions. You must realize, however, that thousands of their dollars are jeopardized, which is rightfully theirs upon retirement." As the young people in the streets put it, "This is a rip-off."

As you can see many aspects of the existing pension legislation and the proposed pension reform legislation work a great hardship on the poor, women, and minorities. The discrimination against women is particularly distressing because of the increase in female headed households. There has been a 15-percent increase in female headed households since 1959. This is particularly true with regard to minorities: 35 percent of all black families are headed by women and 64 percent of all poor black families are headed by women—1970 census.

But the average American family is affected as well. What has not been recognized by either this administration or this Congress is that women work not to make pin money or to buy luxuries but out of severe need. Take a look at the following chart from the Women's Bureau of the U.S. Department of Labor.

THE MARITAL STATUS OF WOMEN WORKERS IN MARCH 1972

Marital status	All women		Women of minority races	
	Number	Percent distribution	Number	Percent distribution
Total	32,939,000	100.0	4,176,000	100.0
Single	7,477,000	22.7	920,000	22.0
Married (husband present)	19,249,000	58.5	1,991,000	47.7
Husband's 1971 income:				
Below $3,000	1,925,000	5.8	281,000	6.7
$3,000 to $4,999	2,194,000	6.7	394,000	9.4
$5,000 to $6,999	2,926,000	8.9	406,000	9.7
$7,000 and over	12,204,000	37.1	910,000	21.8
Other marital status	6,213,000	18.9	1,265,000	30.3
Married (husband absent)	1,500,000	4.6	538,000	12.9
Widowed	2,570,000	7.8	412,000	9.9
Divorced	2,143,000	6.5	315.000	7.5

The 7.5 million single women who account for 22.7 percent of all working women are obviously working out of necessity. So are the 6.2 million women who are widowed, separated, or divorced. They account for another 18.9 percent of the female work force. Finally, and most tellingly, there are the 4.1 million married women who are working because their husbands earn less than $7,000—equal to another 21.4 percent. They work because one pay check is not enough to support the family. Their earnings help buy food, clothing, and shelter—the necessities of life.

When we add these three groups together, it is clear that 63.5 percent of all working women are working because of dire need. Their

need becomes even more compelling when they become too old to work. For the incomes of our elderly women are among the lowest of all groups in the entire population. The median income of a 72-year-old woman in this country is $1,489. That is a bitter testimonial to how we treat our elderly women.

One of the problems elderly women face, both working women and recipients of survivors benefits is that separate actuarial tables are used when computing pension benefits, women receive lower benefits than men.

This is defended on the grounds that the female population lives longer than their male counterparts. While this is true for the two groups as a whole there is evidence that working women are dying at younger ages just as male workers do. However, from phone calls placed to Metropolitan Life, Prudential, the Society of Actuaries, and from inquiries made by the Congressional Reference Service we find that although there are separate actuarial tables for men and women and tables for working men there are very few tables on the mortality rates of working women. Even in instances where separate tables for working men and working women are kept and are used as the basis for separate computations the EEOC has ruled that this practice is inherently discriminatory.

For example, the EEOC ruled against TIAA-CREF—Teachers Insurance Annuity Association-College Retirement Equities Fund. TIAA did indeed keep separate tables for working men and working women and found that the projected average lifetime for men was 82 years and for their women was 86 years. They then made separate projections of benefits on the basis of these figures. EEOC ruled against them however because they found that 75 percent of the women workers were dying before the age of 86, the average date of mortality. What was happening was that a few women were very long lived and they were dragging the average lifetime expectancy rate of the group to a higher level than the majority of the group actually experienced.

It is clear that in terms of the use of inappropriate actuarial tables, discriminatory age and vesting requirements and the like that women are being treated shabbily. In view of this, I believe the inclusion of a sex discrimination amendment in the bill would have a very salutary effect.

Because of the complexity of this legislation I believe we shall have to continue to make "improvements" in the pension legislation in the years to come but I hope that some improvements can be made before we send this legislation to the President to be signed into law.

Mr. DUNCAN. Mr. Chairman, when dealing with a subject as complex as pension reform which affects so many areas of the law, it is inevitable that the legislation will be complex and cause some new problems as it attempts to solve the old ones.

However, I feel that several provisions of H.R. 12855, the Ways and Means Committee's portion of this legislation, are especially significant and represent considerable improvement over existing law and the pension bill passed by the Senate last September.

Present law places no specific limitation on the amount of deductible retirement plan contributions for corporate employees, limits deductible contributions for self-employed workers to a maximum of 10 per-

cent or $2,500 a year, and makes no provision at all for workers not covered by any type of qualified pension plan.

The proposal to raise the deductible contribution for self-employed workers to $7,500 a year or 15 percent of income is certainly a step in the right direction. The provisions to encourage establishment of Individual Retirement Accounts should help a very large segment of the working force who do not now qualify for tax deductible contributions to help themselves plan for a more secure retirement.

The $75,000 annual limitation for defined benefit plans will adequately protect against Government revenue loss caused by deductible corporate contributions for top executives. At the same time, it should not discourage continuation of the sound existing plans which such corporations as Sears, and the J. C. Penny Co. have established for employees at all levels.

In summary, the legislation now before the House represents many hours of testimony and deliberation by the Committees on Ways and Means and Education and Labor. I am hopeful that the best features of both committee's proposals can be retained and that pension protection for millions of Americans will be extended.

Mrs. GRASSO. Mr. Chairman, today the House considers H.R. 2, the Employee Benefit Security Act—possibly the most important single piece of legislation to assist the American worker in nearly 40 years.

Passage of the Employee Benefit Security Act will improve pension coverage for employees in the private section and will help secure long awaited justice for the American wage earner.

The product of years of effort, the bill represents a major triumph for my friend and colleague, the gentleman from Pennsylvania (Mr. Dent). As a member of the Education and Labor Committee, I am well aware of his dedication and commitment to pension reform legislation.

As we all know, two bills will be offered as substitutes to H.R. 2. As a member of the Education and Labor Committee, I will concentrate my remarks on the merits of H.R. 12906, which encompasses the basic language and scope of the original H.R. 2. The provisions of H.R. 12906 will help protect the pension of the average worker who expects and deserves the promised pension that thousands have been denied.

Mr. Chairman, the inadequacies of many existing pension plans and the abuses associated with their administration have been amply documented and publicized over the years. I am certain that nearly every Member can point to letters documenting the need for improvements in the present private pension plan structure.

More than 30 million workers are covered by private pension plans with assets totaling over $150 billion. These workers have been led to believe that upon retirement they will receive certain pension benefits. In fact, the collection of a pension may depend on luck as much as on length of service. In too many cases, mergers, forced early retirement, plant shutdowns, plan mismanagement, and other difficulties lead to either no pension at all or to a partial payoff on the money invested by the worker in the pension fund.

Offered as a substitute to title I, H.R. 12906 will help eliminate many of the problems associated with private pension plans and establish a minimum level of pension plan responsibility. The bill achieves these

results through minimum vesting, funding, and fiduciary standards and the establishment of a reinsurance program.

In our mobile society, workers no longer remain in the same town or work for the same employer for their entire adult lives. However, under many existing pension plans, workers lose their accumulated pension benefits if they leave before reaching retirement age. By requiring a minimum standard of vesting, the bill insures the rights of employees to share in the company's pension fund even if the employees leave the company before retirement age or have their employment terminated.

The bill allows pension plans to choose one of three vesting schedules and retains the flexibility contained in many existing plans for allowing the payment of pension benefits prior to age 65. This section would rectify the all too common complaint expressed by workers who have contributed 15 or 20 years to a pension fund and then discovered they are not entitled to any pension benefits.

Second, the bill requires the administrators of pension plans to provide participants with detailed information on the particulars of the plan and the financial condition of the plan. In this way, workers will know exactly what they can expect from the pension plan and will have firm indication of the financial stability of the plan itself.

Third, the bill requires an employer to make payments toward the principal of the unfunded accrued liabilities of a pension plan to insure the coverage of current obligations on the plan. No matter how lucrative a pension plan appears on paper, its promises are worthless without sufficient capital.

Finally, the bill establishes a Pension Benefit Guaranty Corporation administered by the Secretary of Labor to insure unfunded vested liabilities. Inclusion of this provision in pension reform legislation is crucial. For a variety of reasons, pension plans have been terminated without completing their responsibilities to their beneficiaries. Plan termination insurance protects pension credits which would otherwise be lost upon termination of the pension plan.

Mr. Chairman, despite some reservations to specific sections of the compromise proposal being offered, I believe that this legislation offers the best opportunity for protecting private pension plans. These plans have been a godsend to thousands of workers who otherwise might be struggling near or below the poverty line during their retirement years.

I will support the bill and urge my colleagues to join me.

Mr. Ford. Mr. Chairman, I rise in support of the Employee Benefits Security Act. This legislation is designed to protect the pension benefits of the millions of working American men and women. It is the product of lengthy and painstaking deliberations of both the Education and Labor Committee on which I serve and the Ways and Means Committee.

The intent of this legislation is to insure that the pension system in the private sector will be a good system, a system that works. The legislation attempts to correct the weaknesses in the present system, and assure that, when workers are promised pension benefits, they do not suffer a loss of those benefits merely because the plan provides for no vesting protection, has been inadequately funded or, for one reason or another, has been terminated.

The legislation before us today would provide these assurances and would facilitate the orderly growth of private pension plans as well. The Employee Benefits Security Act provides for Federal standards of fiduciary responsibility, for minimum standards of vesting and funding and for plan termination insurance. By enacting these standards into law, Congress will be greatly improving the probability that the millions of workers presently covered by private pension plans will, in fact, receive a pension when they retire.

This legislation establishes a tighter reporting and disclosure requirement for pension plans, as well as providing for standards of conduct for fiduciaries exercising power or control over the management of pension funds. It also requires that the administrator of a plan must provide each participant or beneficiary with a written description of the plan in language that an average and reasonable worker can be expected to understand intelligently, as well as with a summary of the annual financial report which is submitted to the Secretary of Labor. The plan description must include a schedule of benefits, eligibility and vesting provisions, claim procedures and remedies, basis of financing, and other plan provisions affecting employees' rights.

The vesting requirement provision of the bill provides for three alternative formulas. One of the following rules would meet the minimum requirements provided for under this legislation: The 10-year service rule which would guarantee 100-percent vesting after 10 years of covered service, but under which no vesting would occur prior to a full 10 years of service; the graded 15-year service rule which provides for 25-percent vesting after 5 years of covered service, increasing by 5 percent for each of the next 5 years, and 10 percent for the subsequent 5 years until 100-percent vesting is achieved at the end of the 15th year; or the "rule of 45," under which 50-percent vesting would occur when age plus the number of years of covered service equals 45. Vesting under the rule would increase by 10 percent each subsequent year until the 100-percent figure is reached.

The bill also provides for assurances that the pension plan will be adequately funded. This protection is guaranteed by the provision which requires an employer to make payments toward the principal of unfunded accrued liabilities. A liability is what is incurred when the employer grants pension credits to employees for past service, and an unfunded liability is what exists when assets are not sufficient to cover the liabilities over the long run.

Mr. Chairman, one of the most important provisions of the legislation before us today is that part of the bill which provides for plan termination insurance. This provision is designed to protect workers who have been paying into pension plans for years, only to learn that, prior to their retirement, the plans, for one reason or another, have terminated. This provision would establish a Pension Benefit Guaranty Corporation which would be administered by the Secretary of Labor and a board of directors which would be comprised of the Secretary and two officers or employees of the Labor Department. Plans would be required to insure unfunded vested liabilities incurred prior to as well as after the enactment of this legislation into law.

The legislation would also include an enforcement provision providing for criminal penalties of 5 years imprisonment and $10,000 fine for

willful violation of the act by individuals, and up to a $200,000 fine for a willful violation of the act by a corporation.

The legislation would also require that the Social Security Administration maintain records of retirement plans in which former employees who have not yet retired have acquired vested benefits. The Social Security Administration under this provision would also be required to provide this information to plan participants and beneficiaries on request and also upon their application for social security benefits.

Mr. Chairman, I cannot overstate the importance and the urgency of the need for prompt enactment of this legislation into law. Ever since I first cosponsored pension protection legislation over 6 years ago, my office has been deluged with mail from my constituents demanding that the Congress provide the American working men and women with protection for their private pension plans. Over the past years, the committee has traveled to my own State of Michigan and conducted hearings in which we have been confronted by the distressing tales of workers who have suffered great damage because of the inadequacy of our present pension protection laws. The committee has heard from witnesses who have described situations resulting in lost and reduced pension benefits as a result of the closing of major employers in the Detroit area such as the Garwood Division of Sargent Industries, of Packard Motors, and Essex Wire.

The Committee was told of the situation which resulted in 1960 when a major Detroit newspaper shut down and paid to its over 400 employees lump-sum pension benefits of approximately $160. We heard from steelworkers who lost jobs as well as pension benefits as a result of the shutdown of the Mahon Industrial Division and the Taylor Cement Co., and we heard the testimony of one individual who received, after 29 long years of service, a lump-sum payment of $1,800 when the Garwood plant closed down in my own district recently.

Mr. Speaker, these were all stories which were related to the committee when it traveled to Michigan. Similar stories can be and have been heard in virtually every State and every congressional district in this country. The evidence in support of the need for the legislation we are considering today is insurmountable. Virtually every major labor organization, including the United Auto Workers, the United Steel Workers, and the AFL–CIO, has expressed its support for this legislation.

It has been considered now for several years by the Congress and the bill before us today has been the result of many long hours of work and negotiation by the distinguished Members of both parties of both the House and the Senate.

Mr. Speaker, the protections which this bill will afford to our American working force is long overdue. At this point I urge my colleagues from both sides of the aisle to give this legislation their unequivocal support so that it can be sent to the White House and be signed into law at the earliest possible date.

Mr. MURTHA. Mr. Chairman, I rise in praise of the Congress for the courage and forthrightness shown by its Members in passing the pension reform bill. This bill is to be held up as a landmark for the workingman, particularly the steelworker, who has been fighting for a vested and portable pension for many years.

This is a capstone of a legislative inquiry that started 7 years ago, spurred on by Congressman John Dent and his subcommittee because of concern for the interests of the workingman.

There can be no doubt that this is a major contribution to a more secure future for men and women who have worked hard all their lives. I do not view the present legislation as a cure-all for the problems of the working man and woman, but it certainly demonstrates that the Congress is moving in the right direction and has the leadership it needs to move into the future.

Mr. DON. H. CLAUSEN. Mr. Chairman, there are very few issues before the Congress that will directly affect as many people as the question of pension reform.

Pensions are becoming a way of life, and rightfully so, in employees' fringe benefit packages at the same time as our average life span is increasing and our retirement age is decreasing.

This trend must be encouraged in every way possible by the Congress, by management, and by labor. Financial preparation for retirement should be among the highest priorities of any individual.

It is the individual who bears the responsibiilty to prepare for those years after he leaves the work force but it seems to me that it is the responsibility of the Congress to make certain that no person who takes the necessary steps is deprived of his benefits because of something beyond his control.

We have seen from past experience that the two basic reasons a worker loses his pension are change of job and lack of financial integrity of the fund. I believe the pension reform bill reported by the Education and Labor Committee will help remedy these two problems in a reasonable and responsible way and it has my full support.

The vesting standards included in the bill make certain that once an individual becomes entitled to benefits he retains his entitlement and is not required to hold the same job or work for the same organization throughout his working career.

Both the general mobility of our society today and the fundamental desire of most Americans to better themselves by seeking and accepting better employment tend to insure that most workers will not spend their lives working at the same job. They should not be penalized for this.

I recently learned of a case where a lady had worked in California for an aircraft company for nearly 20 years. Upon leaving the company she did not qualify for any retirement even though she had paid into the pension fund during her service with that employer. That company's pension plan offered no vesting rights whatsoever.

While this person realizes she has no opportunity to receive retirement benefits for her service, she brought her problem to my attention in the hope that others similarly situated would not be similarly affected.

Likewise, can there be any justification for an individual maintaining a retirement fund throughout his working years and planning his retirement based upon his pension fund only to find that when he is ready to retire the fund is bankrupt and he is unable to collect his annuity?

This kind of heartbreak can be avoided by simple standards of fiduciary responsibility to protect pension funds. Neither a great deal of governmental intervention in the private sector nor a requirement to meet more than ordinary actuarial standards is necessary to meet these goals.

In addition, the bill before us contains pension legislation from the Committee on Ways and Means which relates to the Federal tax structure and the incentives it gives for the creation of pension plans.

The most important of these, of course, is the so-called "Keogh plans" which encourage the self-employed to set up pension plans for themselves.

The bill increases the maximum deductible contribution that an individual is allowed to make on his own behalf to a pension plan. That allowable amount will now be 15 percent of earned income up to a maximum of $7,500. This is a substantial improvement over existing law.

While the H.R. 10 plans have been criticized in some quarters and amendments have been proposed to remove this section from the bill, I strongly believe that such an effort is short-sighted and counterproductive.

It is totally contrary to our best interests to discourage pension plans of whatever type. Every individual must be encouraged to set aside money for his post-working years. And, every consideration must be given to those who do.

Far too many people are attempting to live on fixed, inadequate annuities today. The hardships this causes are increased dramatically in times of inflation and shortages.

Therefore, Mr. Chairman, I support the bill before us today and urge my colleagues to give it overwhelming approval.

Mr. REID. Mr. Chairman, I rise in support of the Employee Benefits Security Act of 1974.

This bill, as worked out between both the House Education and Labor Committee and the House Ways and Means Committee is modest—it does not purport to solve every inequity that presently exists in our private pension systems—but it does make an important step forward in the reform of those systems, and for that reason, I intend to vote for it.

About 30 million workers are presently covered by private pension plans; up to 42 million will be covered by 1980, under plans with assets totaling over $215 billion. While pension plans have served some workers well, it is a fact that many—if not most—workers pay into plans year after year expecting to receive insurance for their retirement, and end up getting back absolutely nothing—either because their company or plant goes out of business, or because it merges with another and the pension system is revoked, or because there are insufficient funds in the pension system, or because the managers of the pension plans have made bad investments, or because fund trustees and administrators breach faith with employees. In sum, there are too many "iffy questions" for a worker to feel any real security, as is evident by the fact that of those who have worked and then left jobs with pension plans over the past 20 years, only about 5 percent will ever receive any benefits.

So reform is vital, and long overdue.

The committee bill will, first of all, require disclosure and reporting requirements, thus helping to protect employees from self-dealing managers. It will also establish fiduciary standards to provide additional safeguards against mismanagement.

Second, the bill provides for three alternative minimum vesting standards—whereby a worker may receive benefits even though he or she has not reached the retirement age, should he or she for some reason terminate his employment. The three alternatives include: First, the 10-year service rule, whereby a worker would receive 100 percent vesting after 10 years of covered service, but nothing before that period; second, the graded 15-year service rule, whereby a worker would receive 25 percent vested after 5 years of covered service, with the percentage increasing by 50 percent each year until the 10th year, and then increasing 10 percent each additional year through the 15th when 100 percent vesting would be achieved; and third, the rule of 45, whereby a worker would receive 50 percent when his or her age plus covered service equals 45; the percentage would increase by 10 percent each year until 100 percent were reached.

The bill would require actuarialy sound funding of pension plans in order to assure that there is sufficient money to pay the vested benefits to the workers when they are due.

The bill guarantees "termination insurance," which provides a backup for the funding requirements and safeguards workers who might otherwise be deprived of benefits or retirement credit, either through unexpected financial difficulties, mismanagement, embezzlement, or other reasons.

The tax provisions of this bill are also important. One, for instance, limits contributions under qualified plans to reach the lesser of $75,000 or 100 percent of pay in the highest paying 3 years of employment. In the case of defined contribution plans—profit-sharing and money purchase pension plans—the annual set-aside would be limited to the lesser of 25 percent of the employee's compensation or $25,000. Another tax provision increases the limits on deductions for self-employed individuals—in "Keogh" plans—from the present 10 percent of their income, not to exceed $2,500, to 15 percent of their income, not to exceed $7,500.

Mr. Chairman, I am glad to support this legislation. It is long overdue but represents a strong first step toward reform, and I hope that my colleagues will lend it their support so that we may grant American workers the rights they have so long deserved.

Mr. PRICE of Texas. Mr. Chairman, responsible and comprehensive pension reform is necessary to insure that every American working person covered by a pension plan can depend upon that plan to pay benefits to which that person is entitled after retirement.

The goals of the legislation before us are to extend pension plan coverage to more working people, to assure employees equitable pension treatment and benefits, and to protect employees from loss of retirement benefits due to risk of bankruptcy, merger, or reasonable job shifts. While we are considering these changes, we must keep in mind that if Federal pension regulations become too burdensome for employers, those employers may be encouraged to choose not to set up

a pension plan for their employees. After all, these plans are voluntary, and I would strongly oppose any Federal requirement to provide mandatory pension plans in private business.

We must, therefore, be certain that the legislation we enact will accomplish the goals we desire without rendering harm to working Americans by actually discouraging company pension plans.

Along with all the Members of Congress, I have received a number of complaints from my constituents regarding apparent unfairness in pension plans. Many of these reports are truly heartbreaking as the writer tells of how, after long years of hard labor and contributing into the pension fund, he was left without benefits, or drastically reduced benefits, upon retirement because of some apparent inequity in his company's pension plan.

One woman recently wrote me that she is unable to receive the retirement benefit on which she had depended because, although she worked for and contributed into a plan at the same company 17 years, she had not worked 15 years consecutively as required by the company pension plan. The reason she had not was that she quit work for 2 years, after 10 years of work, because of a severe illness in her family. Justice would certainly seem to dictate that she should be eligible for some compensation after her many years of service to her employer.

I have learned of many other examples of working people losing retirement benefits, sometimes due to inequities in the pension plans, sometimes due to the closure of a plant or business. The fate of these people, and the risks of similar tragedy taking place in the future, is reason enough for responsible pension reform legislation.

Under H.R. 2, the pension reform bill now before us, reasonable new requirements would be established to insure funding, vesting, and disclosure and fiduciary standards. Under the vesting requirements, employees who leave or lose their jobs before retirement age will still be assured partial pension benefits when they retire in later years; and employers will be able to choose between three options in determining how his plan will vest his employees. Under the funding requirements of the bill, pension plans will be required to be actuarially sound enough not only to meet current benefit obligations, but also to meet accrued liabilities in case of program termination. The bill strengthens disclosure and fiduciary standards to insure that employees have readily understandable and complete information regarding their pension plans and benefits.

For self-employed persons, this bill includes a revision of the tax laws to raise the amount that can be claimed as a deduction for a retirement program from the present maximum of 10 percent, or $2,500 of earned income annually, to 15 percent, or $7,500, whichever is less. This provision will allow many of the Nation's self-employed, including farmers and ranchers, to better prepare for their future retirement years.

Surprisingly, almost one-half of the Nation's working population is not covered by any company pension plan. This legislation would allow those who are employed by a company, but which do not participate in a pension plan, to participate in an "independent retirement account" and to deduct from his taxes up to $1,500 a year of earned income which is placed in such an account. This provision will encourage more Americans to plan for their retirement years.

This legislation also corrects a provision in the Senate-passed bill (H.R. 4200) which placed unreasonable restrictions on the contributions that an employer may make to profit-sharing plans. The bill before us does allow those who do participate in profit-sharing plans to receive substantial benefits through those plans upon retirement.

The bill does place limits on the amount of tax-deductible contributions which can be made to corporate retirement plans by high-salaried executives.

In spite of the many improvements which will result from this legislation, there are certain provisions in this bill which could result in the termination of some existing pension plans and which might discourage the formation of new ones. These include the requirement that both the Department of Labor and the Department of the Treasury administer the new eligibility-participation, vesting, and funding standards. This will result in employers being forced to file additional reports and forms at a time when we should be moving in the opposite direction toward a reduction in the burden of paperwork upon private businesses. This additional paperwork will result in increased costs for the administration of pension plans. Some estimates indicate that for many small companies the administration costs will double, and those costs are already running up as high as 40 percent of the overall costs of the plans in some cases. Dual reporting could literally force some of these small company plans out of existence, and it is with these small companies where many employees need the pension plans the most. It is unfair to legislate plans out of existence and leave employees with no retirement plan at all.

I would therefore support passage of an amendment which would place the administration responsibility for pension plan standards solely with the Treasury Department which already carries on Federal responsibilities in this area.

Also, the bill provides for a complicated "plan termination insurance" system which imposes new employer liabilities for unfunded claims on the pension fund of up to "50 percent of the net worth" of the employer. This provision would have a devastating impact on the credit rating of many firms. This is a drastic move which requires more study and I would support reconsideration of this provision of the bill.

Basically, however, this legislation will insure many American workers that their retirement benefits will actually be there when retirement comes. In this regard, this is monumental legislation which will take the worry out of being close to retirement age for many workers.

Mr. ANDERSON of Illinois. Mr. Chairman, I wish to state for the record my reasons for opposition to the amendment offered today by the gentleman from Wisconsin (Mr. Reuss) to strike from part II of the substitute bill the increased deduction for H.R. 10 or Keogh plans. I find it curious that the proponents of this amendment are characterizing this provision as a vast new boondoggle or tax loophole for the wealthy. I noted the same language in a letter I received from the AFL-CIO in opposition to this provision which it termed "a tax shelter for high-income, self-employed professionals, especially doctors."

I certainly do not dispute the fact that professionals who are self-employed will be afforded additional incentives under this bill to contribute to a retirement plan. It is my understanding that the main thrust of the pension reform bill now before us is in the direction of improving and expanding our private pension system and insuring that all Americans will have an adequate retirement income. Why the self-employed should be singled out as not being entitled to the same security in their retirement years as other Americans is beyond me. It is not as if they are being given extra special treatment or benefits under this bill. Even with the new limits on deductions for corporate employees in this bill, the self-employed are still not being given equitable tax treatment with respect to their pension plans.

And while the proponents of this amendment are parading the Keogh provision in this bill as simply a loophole for the wealthy, the fact is that it is not just the highly paid professionals who benefit from Keogh plans, but their employees as well. My colleague from Wisconsin, the author of this amendment, pointed out during general debate on Tuesday that a 1968 Treasury study reveals that approximately half of the Keogh plan participants earn over $25,000 a year. While I suppose this is designed to demonstrate to us that Keogh participants are generally very wealthy and thus do not need additional tax incentives for retirement purposes, to me it demonstrates the substantial number of H.R. 10 participants who are not affluent and are not being treated equitably vis-a-vis their corporate counterparts in terms of their pension plans.

The gentleman from Wisconsin would have us believe that the overwhelming majority of self-employed are quite capable of taking care of themselves without tax incentives for retirement planning—that they are financially fixed for life and such a different breed of cat from corporate employees that we should not even be considering them when discussing retirement income security for the American people. I find all this a little difficult to swallow, especially when it comes from many of the same people who revel in taking potshots at big American corporations, and identify themselves with the little man. If there were some consistency here, you would think that these people would be championing the small businessman and the self-employed individual for his rugged individualism, his independence, and his contribution to our competitive free enterprise system. But no, we are now hearing from these same people that not only is bigness bad, but so too is smallness bad. The effect of this amendment, if it is adopted, would be to drive many of the self-employed, and the employees of the self-employed, either to incorporate or to join up with one of the big corporations, and, in the case of the employees, into the labor unions of those firms—which may help to explain the stake labor has in this amendment.

In conclusion, Mr. Chairman, we are not talking here about creating or expanding upon a so-called tax loophole to be abused by the wealthy for their benefit; we are talking about insuring adequate retirement income for the self-employed and their employees, upon which taxes will eventually have to be paid. We are not talking about a new device that will enable the very wealthy to avoid paying tens of thousands of dollars in taxes, we are talking about a very modest increase of from

$2,500 to $7,500 maximum which the self-employed may contribute to a retirement plan. Given the rate of the inflation over the last decade since H.R. 10 was first enacted. I think this is a most reasonable, responsible, and necessary increase. And, if we are to be true to the overall goals of this pension reform legislation we have an obligation to provide this additional retirement plan incentive to the self-employed. I urge defeat of this amendment and any subsequent amendments which may be offered to reduce this deduction.

Mr. BADILLO. Mr. Chairman, I was pleased to support the Employees Benefits Security Act this afternoon, particularly as action in this critical area has been long overdue. In the past, thousands of working men and women have been victimized by private pension plans which have failed to provide adequate financing to meet their responsibilities. As a consequence they have been left to face their later years with only minimal social security payments. During the lengthy and detailed hearings and studies conducted by congressional committees into the private pension issue, a seemingly endless procession of tragic stories, recounting years of dedicated service ending in little or no financial security for retirement, unfolded. I am sure many of us are familiar with the well-known demise of the Studebaker Corp's pension plan and the tragedy which befell many of that company's employees when it was forced to close over 10 years ago. The Studebaker story is just one isolated example of the failure of a pension plan to provide employees with those benefits which they had expected in good faith to receive after so many years of service. This and numerous other examples serve to highlight the Labor Department's report that from one-third to one-half of all workers who are planning on some degree of financial independence during retirement will be let down by their pension plans.

We have come a long way from 1875 when the American Express Co. established the first private pension plan in this country. Today over 30 million workers—approximately 42 percent of the private nonfarm workers—are covered by private pension plans which reportedly have an estimated $150 billion to $160 billion in assets. It has been reported that by 1980 this figure will soar to 42 million covered workers with total assets amounting to some $215 billion. We must bear in mind, particularly in light of these amazing figures, that not only are millions of workers dependent upon these plans for retirement funds but the investment policies pursued by these various pension programs can and will have a significant impact on the Nation's economy. Clearly, meaningful and just regulation is required.

Despite the existence of three Federal laws which regulate various aspects of pensions—the Welfare and Pension Plans Disclosure Act of 1958, the Labor-Management Relations Act, and the Internal Revenue Code—a number of serious inadequacies and shortcomings remain and corrective action must be taken. A Senate Labor Subcommittee has reported that as many as 95 percent of those workers who have left their employment during the past two decades will not receive a single cent from pension plans to which they made regular contributions in expectation of having some degree of security and financial protection. Pension plans have failed to receive adequate financial backing, funds have been mismanaged, payments and coverage have been woefully in-

adequate and the basic rights of American workers have been blatantly ignored or violated. We must not allow this situation to continue.

The measures considered today are welcome but should not be viewed as a panacea for solving all of the ills of the pension system. In fact, this legislation contains a number of serious defects which limit the extension of needed protections and, in at least one instance, amount to nothing more than an unnecessary bonanza for the richest percentage of American families.

The majority of reforms contained in this legislation should facilitate the orderly growth of private pension plans and, by establishing Federal standards of fiduciary responsibility and norms on vesting and funding, we will enhance the likelihood that those workers now covered by private pension plans will actually receive benefits upon retirement. This legislation contains a number of salutary features which will provide urgently required protection for a large percentage of the national work force. Unfortunately, however, there are certain imperfections and omissions which I believe deserve careful consideration and attention.

Although the House failed to adopt my amendment establishing a voluntary portability program for vested pensions, I believe this is an issue on which we must focus attention, particularly in the implementation of the legislation passed this afternoon. As I mentioned during debate on my amendment, vesting and portability are not synonymous and the additional security afforded by portability is required. While my amendment called for a voluntary system, I had attempted at the very least to establish a principle upon which we could build future legislation. I am hopeful that the appropriate legislative committees will nevertheless give close attention to the question of portability with a view toward developing a just and workable system which could be enacted in the future.

One of the principal areas of reform addressed by this legislation is vesting and title I of H.R. 12906 requires pension plans to meet one of three different vesting formulas. While this provision is welcome, it does not go far enough. Vesting rights in the early years of a person's employment are minimal or, under certain plans, nonexistent. We simply cannot permit such a situation to continue, especially in light of the rising unemployment rate and the serious dislocations caused by the energy crisis and unsuccessful economic programs. Workers, in my opinion, have a right to immediate vesting without waiting for a stipulated period of years or working under a formula which would delay their vesting rights for varying periods of time. Pension rights must be guaranteed to workers from the moment they start their jobs. This is especially critical for those unfortunate men and women who may lose their jobs before their pension rights vest because of business failures, plant relocations or economic declines. Also, immediate vesting rights will protect those low-wage earners who move from job to job throughout their working careers in search of either higher wages and/or more suitable or challenging employment. Particularly hard hit are the minorities—blacks. Spanish-speaking, women and youth—who are usually the last hired and the first fired and normally have not been on the job long enough to accrue any vesting rights.

Finally, there is one other feature of this legislation which requires comment. In an ill-conceived move the Ways and Means Committee and the Senate Finance Committee apparently caved in to administration pressure and significantly expanded an undesirable tax loophole by tripling the maximum amount of tax-free contributions self-employed persons are allowed to write off for contribution to retirement plans under the "Keogh plan." This is nothing more than a tax avoidance scheme which primarily benefits high income, self-employed persons. Such a provision is particularly unconscionable when you consider the fact that Treasury Department and Joint Internal Revenue Taxation Committee data reveal that 45 percent of the Keogh tax benefits presently go to persons with reported gross incomes of $50,000 per annum and over, a segment of the population representing less than 1 percent of this country's taxpayers. Why should a privileged, wealthy few receive such special treatment? There is simply no justification for this provision and I felt it should have been removed without hesitation. I commend our distinguished colleague, the gentleman from Wisconsin (Mr. Reuss), for the initiative he took in opposing this special-interest provision. I supported his amendment fully and regret that it was not adopted.

Mr. Chairman, although I have noted a number of defects, this legislation is generally sound. It is a measure which will protect the basic interests of millions of fellow citizens and will provide assurances that their hard earned pensions will be available to them at the time of their retirement. I supported a number of amendments to improve the measure and to close unnecessary gaps. I am hopeful that the conferees will take prompt action in resolving differences between the House and Senate versions of the pension legislation in order that long-overdue and urgently required protections for American workers can be implemented at the earliest possible date.

Mr. DRINAN. Mr. Chairman, I rise in support of the pension legislation before us. This bill is a necessary first step long overdue in the area of private pension reform. Some 36 million workers are currently participating in some form of pension or retirement plan. This number has roughly doubled in each decade since 1940. Estimates of the amount of money held in pension funds range upward of $150 billion.

Unfortunately, this bill does not cure every problem. Future legislation will be necessary. The legislation has been described as modest. I think that that is accurate, but that this step is basic in our effort to protect the long service employee participating in and contributing to a pension plan who might otherwise lose it. This legislation seeks to reduce the adverse effect of plant closing and bankruptcy on such people.

This bill has been widely endorsed by both business and labor interests. It is the product of a consolidation of the efforts of the House Committee on Education and Labor and the House Committee on Ways and Means. I commend the members of those committees, and the Members of this House on their efforts in bringing this legislation before us today.

For too long the promise of private pensions has turned out to be a mirage for millions of workers. Under current law, pensions are virtually unregulated. In all too many cases, the promise of a private

pension shrinks to the very small likelihood that an employee will stay with the company long enough and that the company will remain financially healthy long enough, for him to receive pension benefits.

Perhaps the worst part of the failures of current pension plans is that in too many cases employees forego increases in wages for expected benefits at retirement.

The bill before us today accomplishes six basic purposes. The bill establishes basic requirements for the funding of private pension plans. Under current law, plans are only required to fund current liabilities. This bill would require that accrued liabilities and past service costs be amortized over a 30-year period. This funding requirement should sharply reduce any likelihood that plans will be unable to pay off their vested benefits because they have been underfunded.

In addition, the bill sets standards for the conduct of fiduciaries who manage these pension plans. These standards should prevent abuses in the management of pension plan funds, such as self-interest transactions, and other unwise and dishonest financial dealings. The financial security of pension plans should be enhanced.

The bill also requires that participants in the plan be adequately informed of their rights to benefits and of the financial status of the plan. In addition, the bill requires disclosures of all pertinent financial information on the plan so that its fiscal strength cannot be kept secret.

Perhaps the most important provisions of this bill for the individual worker are those which establish minimum "vesting" standards. These provisions will guarantee workers a nonforfeitable right to a pension after a specified term of service. Under any of these vesting schedules, a plan participant over the age of 25 will be assured of vesting 100 percent of his retirement benefits after a term of service of between 10 and 15 years.

A Department of Labor study has shown that plant closings, financial mismanagement of plans and other business failures caused 19,000—in 1972—to lose their vested pension benefits. The bill before the House today would prevent anyone who has a vested pension benefit from losing his benefit because of plan failure for any reason. A plan termination insurance program is established by the bill, and financed by employee contributions to an insurance corporation administered by the Department of Labor.

One serious shortcoming of this bill is its failure to provide "portable pensions" in any meaningful way. While there are some commendable advantages allowed engineers, scientists, and other highly mobile employees for their pension plans, the bill contains no comprehensive program to allow workers to move from one job to another and carry their pension benefits with them without sacrificing some financial advantage.

For those not participating in corporate pension plans, the bill offers two changes in existing self-employed retirement options. Title II of this bill would equalize the tax advantages of corporate plans with those of the plans of self-employed individuals by increasing the maximum allowable deduction under so-called Keogh or H.R. 10 plans to 15 percent of earned income not to exceed $7,500. In addition, for those individuals not participating in any kind of pension plan the bill establishes new tax advantages for "individual retirement

accounts." Under the new provisions, individuals not covered by a qualified or Government pension plan are permitted to take a deduction of up to 20 percent of their earned income up to a maximum of $1,500.

The bill also provides needed restraints on the excesses of pensions which are primarily for the benefit of highly paid individuals. Under current law, it is possible for a highly paid individual to receive a massive pension which is subsidized at the cost of many thousands of dollars to the general taxpaying public. This bill would set a limit on pension benefits for such highly paid individuals of the lesser of $75,000 or 100 percent of an individual's compensation during his three highest annual earning years. Still, this bill generally provides excessive tax advantages benefitting the wealthy, and subsidized by all taxpayers. These tax advantages must be further examined and the subject of further legislation in this area.

Mr. Chairman, I am hopeful that the conference committee can pass this bill rapidly, as it will bring needed relief to millions of workers.

Mr. FASCELL. Mr. Chairman, I rise in strong support of title I and title II of the Employee Benefits Security Act, offered by the Education and Labor and the Ways and Means Committees respectively. There is no question that this is landmark legislation which will greatly benefit working men and women for years to come.

First, I commend the special efforts of our colleagues on the Education and Labor and Ways and Means Committtees who have spent months working on this complex issue so that all of the related aspects of pension reform could be considered at the same time. Because of the dual jurisdiction this was indeed a difficult task, and I commend all involved for their dedication and tenacity. The result is, I believe, legislation which will provide protection for employees' retirement benefits and at the same time retain the incentives for employers to establish the voluntary retirement plans.

Congressman Dent deserves special recognition for his work as chairman of the General Subcommittee on Labor and its Pension Task Force. The extensive investigation and hearings which he conducted have provided us the basis upon which rational and workable decisions on pension reform could be made, and I was pleased to cosponsor with him the bill originally reported by the Education and Labor Committee.

As the Representative of south Florida's 15th Congressional District which has a high concentration of retired senior citizens, the serious economic problems facing many retirees are brought to my attention daily. These senior citizens spent many years in the work force caring for their families and planning for their retirement. In many cases, unfortunately, those retirement years which had been anxiously anticipated, in reality turn into nightmares. Social security benefits, originally intended to supplement retired income, often becomes the only source of income for retired senior citizens and many are forced to deplete their savings; if indeed they are fortunate enough to have any savings, to make ends meet.

While the Congress has been diligent in its efforts to increase social security benefits as the cost of living has risen, we all realize that social security alone cannot cover basic necessities with the cost of living

where it is today. So life for senior citizens becomes a constant battle to stretch meager funds to meet food, health, and housing needs.

In many cases, retirees are forced to live on their social security benefits because they have been arbitrarily denied retirement benefits from private pension plans they contributed to during their working years.

We are all too familiar with numerous examples of persons who have worked and paid into private pension plans for a long period of years only to find that their employer went bankrupt just before their retirement, or sold the business to someone who discontinued the pension plan or changed eligibility requirements, or that the fund was insufficiently funded to meet its plan obligations. I recall one case in particular where an individual had performed the same job at the same plant for nearly 30 years. The company changed ownership three times during his employment, however, and each time the new owner established a different retirement plan. Just before qualifying for benefits under the third plan, the man was dismissed from his job. He never received any benefit from nearly 30 years of contributions to a retirement plan.

The legislation before the House now would protect working men and women from being arbitrarily deprived in this manner of benefits they have earned.

Key provisions of the Employee Benefits Security Act call for new requirements regarding fiduciary responsibility and disclosure. Other significant provisions set vesting and funding requirements and establish plan termination insurance.

The minimum vesting standards are probably the single most important aspect of the bill. These will make it possible for workers to achieve a nonforfeitable claim to benefits which have been earned by them and which have accrued to them. Even though a worker's job is terminated, once he has a vested claim, he will be eligible for the same retirement benefits.

The three alternatives for full vesting offer private industry adequate flexibility, and balance the protection offered employees against the additional cost involved in financing the plan, and are supported by minimum funding requirements.

These provisions should act to minimize the incidents involving failure to realize benefits from pension plans. There may occur, however, unexpected business failures, bankruptcy, or fund mismanagement which inadvertently lead to plan termination in spite of the safeguards provided in this bill. For these unusual cases, the bill establishes termination insurance similar in operation to the Federal Deposit Insurance Corporation which will require a contribution from pension benefit plans which in turn will be paid out to those which are terminated.

The provisions reported by the Ways and Means Committee regarding tax treatment of qualified pension plans have also been developed to provide the maximum protection for employees while maintaining the incentive for employers to establish these voluntary plans. The committee has also acted to equalize tax treatment under retirement plans, and has recommended a new type of individual retirement plan for employees who are not in a qualified plan, Government pension plan, or annuity plan established by a tax exempt institution. The

committee has noted that by encouraging employers to make modest contributions initially for the retirement needs of their employees, such individual retirement plans will lead eventually to the establishment of a significant number of new qualified retirement plans.

Mr. Chairman, it is estimated that approximately 36 million workers are currently participating in some pension or retirement plan. The combined resources of existing pension plans are estimated to be in excess of $150 billion and are increasing at a rate in excess of $10 billion annually. Many workers now paying into these plans will receive the benefits they have earned. But many others may not unless we act to set the minimum standards proposed in the substitutes being offered to H.R. 2. It is unfair and inequitable for workers to defer income in anticipation of retirement benefits which they will never get. Enactment of this legislation will go far toward eliminating those inequities.

The CHAIRMAN. If there are no further amendments, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Boland, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act, pursuant to House Resolution 896, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment adopted in the Committee of the Whole? If not the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

RECORDED VOTE

Mr. ULLMAN. Mr. Speaker, on that I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—yeas 376, noes 4, not voting 51, as follows:

[ROLL NO. 56]

AYES—376

Abdnor	Alexander	Annunzio
Abzug	Anderson, Calif.	Archer
Adams	Anderson, Ill.	Arends
Addabbo	Andrews, N. Dak.	Armstrong

Ashbrook
Ashley
Aspin
Badillo
Bafalis
Barrett
Bauman
Beard
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blackburn
Blatnik
Boggs
Boland
Bowen
Brademas
Bray
Breaux
Breckinridge
Brinkley
Brooks
Broomfield
Brotzman
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill, Va.
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Butler
Byron
Carter
Casey, Tex.
Cederberg
Chappell
Chisholm
Clancy
Clark
Clausen, Don H.
Clawson, Del.
Clay
Cleveland
Cochran
Cohen
Collier
Collins, Ill.
Conable
Conlan
Conte
Conyers
Corman
Cotter
Coughlin
Cronin
Culver
Daniel, Dan
Daniel, Robert W., Jr.
Daniels, Dominick V.
Danielson
Davis, Ga.
de la Garza
Delaney
Dellums
Denholm
Dennis
Dent
Derwinski
Dickinson
Diggs
Dingell
Donohue
Dorn
Downing
Drinan
Dulski
Duncan
du Pont
Eckhardt
Edwards, Ala.
Edwards, Calif.
Eilberg
Erlenborn
Esch
Eshleman
Evans, Colo.
Evins, Tenn.
Fascell
Findley
Fish
Flood
Flowers
Flynt
Ford
Forsythe
Fountain
Fraser
Frenzel
Frey
Froehlich
Fulton
Fuqua
Gaydos
Gettys
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Grasso
Green, Pa.
Griffiths
Gross
Grover
Gubser
Gude
Gunter
Guyer
Haley
Hamilton
Hammerschmidt
Hanley
Hanrahan
Hansen, Idaho
Hansen, Wash.
Harrington
Harsha
Hastings
Hawkins
Hays
Hébert
Hechler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Hogan
Holifield
Holt
Holtzman
Horton
Hosmer
Howard
Huber
Hungate
Hunt
Hutchinson
Ichord
Jarman
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jordan
Karth
Kastenmeier
Kazen
Kemp
King
Koch
Kyros
Landrum
Latta
Lehman
Lent
Long, La.
Long, Md.
Lott
Lujan
McClory
McCloskey
McCollister
McCormack
McDade
McEwen
McFall
McKay
McKinney
Macdonald
Madden
Madigan
Mahon
Mallary

Mann
Mazzoli
Martin, Nebr.
Martin, N.C.
Mathias, Calif.
Mathis, Ga.
Matsunaga
Mayne
Mazzoli
Meeds
Melcher
Metcalfe
Mezvinsky
Milford
Miller
Minish
Mink
Minshall, Ohio
Mitchell, Md.
Mitchell, N.Y.
Mizell
Moakley
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers
Natcher
Nedzi
Nelsen
Nix
O'Brien
O'Hara
Parris
Passman
Patman
Patten
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Poage
Podell
Preyer
Price, Ill.
Price, Tex.
Pritchard
Quie
Quillen
Railsback
Randall
Rangel
Rarick
Rees
Regula
Reid
Reuss
Rhodes
Riegle
Rinaldo
Robinson, Va.
Robison, N.Y.
Rodino
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, Pa.
Rosenthal
Roush
Rousselot
Roy
Roybal
Runnels
Ruppe
Ruth
St Germain
Sandman
Sarasin
Sarbanes
Satterfield
Scherle
Schneebeli
Sebelius
Seiberling
Shipley
Shoup
Shriver
Shuster
Skubitz
Slack
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Staggers
Stanton, J. William
Stanton, James V.
Stark
Steed
Steele
Steelman
Steiger, Ariz.
Steiger, Wis.
Stephens
Stratton
Stubblefield
Stuckey
Studds
Symington
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thompson, N.J.
Thomson, Wis.
Thone
Thornton
Tiernan
Towell, Nev.
Treen
Udall
Ullman
Van Deerlin
Vander Jagt
Vander Veen
Vanik
Veysey
Vigorito
Waggonner
Walsh
Wampler
Ware
Whalen
White
Whitehurst
Whitten
Widnall
Wiggins
Williams
Wilson, Bob
Wilson, Charles H., Calif.
Wilson, Charles, Tex.
Wolff
Wright
Wydler
Wylie
Wyman
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Ga.
Young, Ill.
Young, S.C.
Young, Tex.
Zablocki
Zion
Zwach

NOES—4

Bolling
Collins, Tex.
Landgrebe
Symms

NOT VOTING—51

Andrews, N.C.
Baker
Bell
Brasco
Broyhill, N.C.
Burton
Camp
Carey, N.Y.
Carney, Ohio
Chamberlain
Crane
Davis, S. C.

Davis, Wis.	Kuykendall	Roberts
Dellenback	Leggett	Rooney, N.Y.
Devine	Litton	Rose
Fisher	McSpadden	Rostenkowski
Foley	Mailliard	Ryan
Frelinghuysen	Michel	Schroeder
Gray	Mills	Sikes
Green, Oreg.	Moss	Sisk
Hanna	Nichols	Stokes
Hudnut	Obey	Sullivan
Jones, Tenn.	O'Neill	Waldie
Ketchum	Owens	Winn
Kluczynski	Powell, Ohio	Wyatt

So the bill was passed.

The Clerk announced the following pairs:

Mr. Rostenkowski with Mr. Foley.
Mr. Rooney of New York with Mr. Davis of South Carolina.
Mr. Kluczynski with Mr. Fisher.
Mr. Brasco with Mr. Powell of Ohio.
Mr. Carey of New York with Mr. McSpadden.
Mr. O'Neill with Mr. Baker.
Mr. Rose with Mr. Mills.
Mr. Litton with Mr. Michel.
Mrs. Schroeder with Mr. Owens.
Mr. Carney of Ohio with Mr. Davis of Wisconsin.
Mr. Andrews of North Carolina with Mr. Crane.
Mr. Jones of Tennessee with Mr. Mailliard.
Mr. Leggett with Mr. Devine.
Mr. Moss with Mr. Kuykendall.
Mr. Nichols with Mr. Hudnut.
Mrs. Sullivan with Mr. Frelinghuysen.
Mr. Sisk with Mr. Camp.
Mr. Roberts with Mr. Wyatt.
Mr. Burton with Mr. Chamberlain.
Mr. Sikes with Mr. Bell.
Mr. Obey with Mr. Dellenback.
Mr. Waldie with Mr. Ryan.
Mr. Hanna with Mr. Broyhill of North Carolina.
Mr. Gray with Mr. Stokes.
Mrs. Green of Oregon with Mr. Winn.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to provide for pension reform."

A motion to reconsider was laid on the table.

Authorizing the Clerk To Make Technical Corrections in H.R. 2, Employee Benefits Security Act

Mr. Gibbons. Mr. Speaker. I ask unanimous consent that in the engrossment of the bill, H.R. 2, Employee Benefits Security Act, the Clerk be authorized to make technical corrections in punctuation, paragraph headings, and cross-references.

The Speaker. Is there objection to the request of the gentleman from Florida?

There was no objection.

[From the Congressional Record—Senate, Mar. 4, 1974]

Employeee Benefit Security Act of 1974

Mr. Williams. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 2.

The Acting President pro tempore (Mr. Huddleston) laid before the Senate H.R. 2, to provide for pension reform.

Mr. Williams. Mr. President, I ask unanimous consent that H.R. 2 be considered as having been read twice and that the Senate proceed to its immediate consideration.

The Acting President pro tempore. Without objection, it is so ordered.

Mr. Williams. Mr. President, I move to strike out all language after the enacting clause and to insert in lieu thereof the amendment which I now send to the desk, and ask that it be stated.

The Acting President pro tempore. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

[The full text of the amendment appears on p. 3599, H.R. 2, as passed by the Senate.]

Mr. Williams. Mr. President, the amendment which I have sent to the desk contains the exact language of H.R. 4200 which is the major pension reform legislation passed by the Senate on September 19, 1973 by the unanimous vote of 93 Senators. I am offering the amendment in order that we may go to conference as soon as possible on this important issue of private pension reform for American working men and women. It is my sincere hope, that by this approach, we may proceed to conference expeditiously and resolve the differences between the two Houses of Congress and thus achieve agreement for final enactment of this legislation.

Mr. Hugh Scott. Mr. President, reserving the right to object—and I will not object—I rise only for the purpose of commending the distinguished Senator from New Jersey (Mr. Williams) for bringing this matter up promptly. It is one that has been close to the hearts of a great many of us.

I should like to point out that it has bipartisan support and would like to correct the CBS broadcast on the House action where Cronkite said last week that this was a one-party bill. This is an example of an unfortunate inaccuracy. I am sure that all Senators here realize that while we have our differences, there are Senators on both sides of the aisle who, from the very beginning, are extremely anxious to see pension reform legislation approved and become law. I have supported it. I support the Senator's general approach, and I am delighted that we have reached this point. I am glad that this is a bipartisan measure, and I commend the Senator from New Jersey.

Mr. MANSFIELD. Mr. President, for the past 4 years, I have heard the distinguished Republican leader, time and time again, urge the passage of the pension legislation. It has been one of his major concerns.

Mr. HUGH SCOTT. I do thank the distinguished Senator from Montana. Mr. Cronkite made a plain but inaccurate statement which brought me off my chair.

Mr. WILLIAMS. I thank the distinguished majority leader and the distinguished minority leader. The bill is anything but a partisan bill. It is completely bipartisan. It has the complete support of all the committees concerned, on both sides of the Capitol as well as of the Finance Committee and the Ways and Means Committee.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from New Jersey.

The amendment was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 2) was passed.

[The text of H.R. 2, as passed by the Senate, follows:]

93D CONGRESS
2D SESSION

H. R. 2

IN THE SENATE OF THE UNITED STATES

MARCH 4, 1974

Received; read twice, considered, amended, read the third time, and passed

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To provide for pension reform.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SHORT TITLE AND TABLE OF CONTENTS~~

~~SECTION 1. This Act may be cited as the "Employee Benefit Security Act of 1974".~~

~~TABLE OF CONTENTS~~

~~Page~~

~~Sec. 1. Short title and table of contents 1~~

~~TITLE I—REGULATION OF EMPLOYEE BENEFIT PLANS~~

~~Subtitle A—Policy; Definitions~~

~~Sec. 2. Findings and declaration of policy 3~~
~~Sec. 3. Definitions 6~~

~~Subtitle B—Regulatory Provisions~~

~~PART 1—FIDUCIARY RESPONSIBILITY AND DISCLOSURE~~

~~Sec. 101. Coverage 21~~
~~Sec. 102. Duty of disclosure and reporting 22~~
~~Sec. 103. Description of the plan 23~~
~~Sec. 104. Annual reports 24~~
~~Sec. 105. Publication 38~~
~~Sec. 106. Reporting of participant's benefit rights 42~~
~~Sec. 107. Reports made public information 45~~
~~Sec. 108. Retention of records 45~~
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~~Sec. 110. Bonding 47~~
~~Sec. 111. Fiduciary responsibility 50~~
~~Sec. 112. Plan termination 59~~
~~Sec. 113. Prohibition against certain persons holding office 66~~
~~Sec. 114. Advisory council 69~~
~~Sec. 115. Repeal and effective date 71~~

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* * * * * * *

~~Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) shall not apply to any trust described in this subsection.".~~

~~(b) OTHER AMENDMENTS TO SECTION 404(c)(1).—~~

~~(1) Paragraph (1) of the first sentence of section 404(c) is amended by striking out "and pensions" and inserting in lieu thereof "or pensions".~~

~~(2) The last sentence of section 404(c) is amended by striking out "This subsection" and inserting in lieu thereof "The first and third sentences of this subsection".~~

~~(c) EFFECTIVE DATE. The amendments made by this section shall apply to taxable years ending on or after June 30, 1972.~~

That (a) section 122(a) of the Internal Revenue Code of 1954 (relating to certain reduced uniform services retirement pay) is amended to read as follows:

"(a) GENERAL RULE.—In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10 of the United States Code."

(b) Section 122(b)(2 of such Code is amended by striking out "section 1438" in subparagraph (B) and inserting in lieu thereof "section 1438 or 1452(d)".

(c) Section 72(o) of such Code is amended by inserting after "PLAN" in the heading of such section "OR SURVIVOR BENEFIT PLAN".

(d) Section 101(b)(2)(d) of such Code is amended by striking out "if the individual who made the election under such chapter" and inserting in lieu thereof "if the member or former member of the uniformed services by reason of whose death such annuity is payable".

(e) Section 2039(c) of such Code is amended by striking out "section 1438" in the last sentence and inserting in lieu thereof "section 1438 or 1452(d)".

(f) The amendments made by subsections (a), (b), and (c) shall apply to taxable years ending on or after September 21, 1972. The amendments made by subsections (d) and (e) shall apply with respect to individuals dying on or after such date.

SEC. 2. (a) This Act, other than the first section, may be cited as the "Retirement Income Security for Employees Act".

(b) TABLE OF CONTENTS.—

TITLE I—ADMINISTRATION

PART A—INTERNAL REVENUE SERVICE

Sec. 101. Establishment of office.
Sec. 102. Authorization of appropriations.

Part B—Registration

Sec. 151. Duties of plans.
Sec. 152. Duties of Secretary of Health, Education, and Welfare.
Sec. 153. Effective date.
Sec. 154. Authorization of appropriations for Department of Labor.

TITLE II—PARTICIPATION; VESTING; FUNDING; CERTAIN BENEFITS

Part A—Participation

Sec. 201. Minimum standards relating to participation.

Part B—Vesting

Sec. 221. Minimum standards relating to vesting.
Sec. 222. Certain nonqualified plans.

Part C—Funding

Sec. 241. Minimum standards relating to funding.

Part D—Optional Form of Benefit; Special Rules

Sec. 261. Amendment of section 401.
Sec. 262. Prohibition against maintaining nonqualified plans.

Part E—Protection of Pension Rights Under Government Plans and Contracts

Sec. 281. Duties of the Secretary of the Treasury.
Sec. 282. Duties of Secretary of Labor.

TITLE III—PORTABILITY

Sec. 301. Definitions.
Sec. 302. Program established.
Sec. 303. Establishment of fund.
Sec. 304. Registration.
Sec. 305. Acceptance of deposits.
Sec. 306. Individual accounts.
Sec. 307. Payments from individual accounts.
Sec. 308. Assistance to plan administrators.
Sec. 309. Amendment of Internal Revenue Code of 1954.
Sec. 310. Authorization of appropriations.

TITLE IV—PLAN TERMINATION INSURANCE

Part A—Pension Benefit Guaranty Corporation

Sec. 401. Definitions: Special rules.
Sec. 402. Pension Benefit Guaranty Corporation.
Sec. 403. Establishment of Pension Benefit Guaranty Fund.

Part B—Coverage

Sec. 421. Plans covered.
Sec. 422. Benefits covered.
Sec. 423. Contingent liability coverage.
Sec. 424. Other risks.

TITLE IV—PLAN TERMINATION INSURANCE—Continued

Part C—Terminations

Sec. 441. Termination by plan administrator.
Sec. 442. Termination by Pension Benefit Guaranty Corporation.
Sec. 443. Reportable events.
Sec. 444. Allocation of assets.
Sec. 445. Recapture of certain payments.
Sec. 446. Report by corporation.

Part D—Liability

Sec. 461. Corporation liability.
Sec. 462. Liability of employer.
Sec. 463. Liability of substantial employer for withdrawal.
Sec. 464. Liability of employers on termination of multiemployer plan.
Sec. 465. Annual report of plan administrator.
Sec. 466. Annual notification to substantial employers.
Sec. 467. Recovery of employer liability for plan termination.

Part E—Amendments to Internal Revenue Code of 1954; Effective Dates

Sec. 481. Amendments to Internal Revenue Code of 1954.
Sec. 482. Effective dates.

Part F—Allocation of Assets Where Section 444 Does Not Apply

Sec. 491. Allocation of assets for plan terminations not covered.

TITLE V—DISCLOSURE AND FIDUCIARY STANDARDS

Part A—Disclosure

Sec. 501. Authority to issue regulations.
Sec. 502. Amendment to Welfare and Pension Plans Disclosure Act.
Sec. 503. Annual reports.
Sec. 504. Investigations.
Sec. 505. Public information.
Sec. 506. Establishment of Advisory Council.
Sec. 507. Administration.

Part B—Fiduciary Standards

SUBPART I—FIDUCIARY STANDARDS UNDER THE WELFARE AND PENSION PLANS DISCLOSURE ACT

Sec. 511. Amendment to the Welfare and Pension Plans Disclosure Act.
Sec. 512. Effective dates.

SUBPART II—FIDUCIARY STANDARDS UNDER THE INTERNAL REVENUE CODE OF 1954

Sec. 521. Fiduciary standards.
Sec. 522. Prohibited transactions.

TITLE VI—ENFORCEMENT

Part A—Disputes Relating to the Qualification of Certain Employee Plans

Sec. 601. Tax Court procedure.

TITLE VI—ENFORCEMENT—Continued

PART B—AUDITING, ETC.

Sec. 641. Excise tax for auditing; etc.

PART C—ACTUARIES

Sec. 671. Enrollment and reports of actuaries.

PART D—ENFORCEMENT; RESOLUTION OF DISPUTES GENERALLY

Sec. 691. Arbitration; civil actions by participants and beneficiaries.
Sec. 692. Civil actions by Secretary of Labor.
Sec. 693. Actions to redress or restrain violations of fiduciary duty.
Sec. 694. Jurisdiction of courts.
Sec. 695. Procedure.
Sec. 696. Application of Act of March 23, 1932.
Sec. 697. Actions brought by administrator or fiduciary against Secretary.
Sec. 698. Statute of limitations.
Sec. 699. Relationship to State laws.
Sec. 699A. Recrimination against employees and other persons.
Sec. 699B. Interference with rights.

TITLE VII—RETIREMENT SAVINGS; LIMITATION ON PROPRIETARY EMPLOYEE CONTRIBUTIONS; TAXATION OF CERTAIN LUMP-SUM DISTRIBUTIONS

Sec. 701. Deduction for retirement savings.
Sec. 702. Certain plans.
Sec. 703. Taxation of certain lump-sum distributions.
Sec. 704. Contributions on behalf of self-employed individuals and proprietary employees.
Sec. 705. Collectively bargained plans.
Sec. 706. Miscellaneous provisions.

1 *(c) Amendment of 1954 Code.—Except as otherwise*
2 *expressly provided, whenever in this Act an amendment*
3 *is expressed in terms of an amendment to a section or other*
4 *provision, the reference is to a section or other provision*
5 *of the Internal Revenue Code of 1954.*

6 # *TITLE I—ADMINISTRATION*

7 ## *PART A—INTERNAL REVENUE SERVICE*

8 *SEC. 101. ESTABLISHMENT OF OFFICE.*

9 *(a) IN GENERAL.—Section 7802 (relating to Com-*
10 *missioner of Internal Revenue) is amended to read as*
11 *follows:*

1 *"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE;*
2 *ASSISTANT COMMISSIONER.*
3 *"(a) COMMISSIONER OF INTERNAL REVENUE.—There*
4 *shall be in the Department of the Treasury a Commissioner*
5 *of Internal Revenue, who shall be appointed by the President*
6 *by and with the advice and consent of the Senate. The Com-*
7 *missioner of Internal Revenue shall have such duties and*
8 *powers as may be prescribed by the Secretary.*
9 *"(b) ASSISTANT COMMISSIONER FOR EMPLOYEE*
10 *PLANS AND EXEMPT ORGANIZATIONS.—There is estab-*
11 *lished within the Internal Revenue Service an office to be*
12 *known as the 'Office of Employee Plans and Exempt Orga-*
13 *nizations'. The Office shall be under the supervision and*
14 *direction of an Assistant Commissioner of Internal Revenue.*
15 *As head of the Office, the Assistant Commissioner shall be*
16 *responsible for carrying out such functions as the Secretary*
17 *or his delegate may prescribe with respect to organizations*
18 *exempt from tax under section 501(a) and with respect to*
19 *plans to which part I of subchapter D of chapter 1 applies*
20 *(and with respect to organizations designed to be exempt*
21 *under such section and plans designed to be plans to which*
22 *such part applies)."*.
23 *(b) SALARIES.—*
24 *(1) ASSISTANT COMMISSIONER.—Section 5109 of*

1 *title 5, United States Code, is amended by adding at*
2 *the end thereof the following new subsection:*
3 *"(c) The position held by the employee appointed under*
4 *section 7802(b) of the Internal Revenue Code of 1954*
5 *is classified at GS–18, and is in addition to the number*
6 *of positions authorized by section 5108(a) of this title.".*
7 *(2) CLASSIFICATION OF POSITIONS AT GS–16*
8 *AND 17.—Section 5108 of title 5, United States Code, is*
9 *amended by adding at the end thereof the following new*
10 *subsection:*
11 *"(e) In addition to the number of positions authorized*
12 *by subsection (a), the Commissioner of Internal Revenue is*
13 *authorized, without regard to any other provision of this sec-*
14 *tion, to place a total of 20 positions in the Internal Revenue*
15 *Service in GS–16 and 17.".*
16 *(c) CLERICAL AMENDMENT.—The table of sections for*
17 *subchapter A of chapter 80 is amended by striking out the*
18 *item relating to section 7802 and inserting in lieu thereof*
19 *the following:*

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner.".

20 *SEC. 102. AUTHORIZATION OF APPROPRIATIONS.*
21 *(a) INITIAL AUTHORIZATION.—There is authorized*
22 *to be appropriated to the Department of the Treasury for the*
23 *purpose of carrying out all functions of the Office of Em-*
24 *ployee Plans and Exempt Organizations for each of the fiscal*

1 *years ending June 30, 1974, June 30, 1975, and June 30,*
2 *1976, an amount equal to the sum of $35,000,000 and one-*
3 *half of the collections from the taxes imposed under sec-*
4 *tion 4940 of the Internal Revenue Code of 1954 (relating*
5 *to excise tax based on investment income) during the sec-*
6 *ond preceding fiscal year.*
7 *(b) PERMANENT AUTHORIZATION.—There is author-*
8 *ized to be appropriated to the Department of the Treasury for*
9 *the purpose of carrying out all functions of the Office of*
10 *Employee Plans and Exempt Organizations for each fiscal*
11 *year beginning after June 30, 1976, an amount equal to the*
12 *sum of—*
13 *(1) the amount of the collection from the taxes im-*
14 *posed under section 4975 of the Internal Revenue Code*
15 *of 1954 (relating to annual tax on plan participation)*
16 *during the second preceding fiscal year, and*
17 *(2) one-half of the collections from the taxes im-*
18 *posed under section 4940 of such Code (relating to*
19 *excise tax based on investment income) during the sec-*
20 *ond preceding fiscal year.*
21 *PART B—REGISTRATION*
22 *SEC. 151. DUTIES OF PLANS.*
23 *(a) ANNUAL REGISTRATION.—Within such period*
24 *after the end of a plan year as the Secretary of the Treas-*
25 *ury may prescribe, the administrator of each plan to which*

1 *part I of subchapter D of chapter 1 of the Internal Revenue*
2 *Code of 1954 applied at any time during such plan year,*
3 *and each pension plan operated by the Government of the*
4 *United States, or by the government of any State (including*
5 *the District of Columbia) or political subdivision thereof,*
6 *or by an agency or instrumentality thereof, shall file a reg-*
7 *istration statement with the Secretary of the Treasury. The*
8 *registration statement shall set forth—*
9 *(1) the name and address of the plan,*
10 *(2) the name and taxpayer identification number*
11 *of each individual who has a right to a deferred vested*
12 *benefit in that plan as of the end of such plan year (other*
13 *than those individuals who were paid retirement benefits*
14 *under that plan during such plan year) and who has*
15 *terminated his employment with the employer, who es-*
16 *tablished and maintained that plan, within that year,*
17 *(3) the nature, amount, and form of any such*
18 *deferred vested benefit, and*
19 *(4) such additional or other information as the*
20 *Secretary may require.*
21 *(b) Changes in Status.—The administrator of any*
22 *plan required to be registered under section (a) shall also*
23 *notify the Secretary, at such time as the Secretary may pre-*
24 *scribe, of—*
25 *(1) any change of address of the plan,*

1 *(2) any change of name of the plan,*

2 *(3) the termination of the plan, or*

3 *(4) the merger or consolidation of the plan with*

4 *any other plan.*

5 *(c) VOLUNTARY REPORTS.—The Secretary is author-*

6 *ized and directed to receive such additional reports relating*

7 *to plan years ending before January 1, 1974, as the ad-*

8 *ministrator of any such plan may wish to file with*

9 *him relating to the deferred vested benefit rights of any per-*

10 *son terminating his employment during any such plan year*

11 *with the employer who established and maintained the plan.*

12 *(d) TRANSMISSION OF INFORMATION TO SECRETARY*

13 *OF HEALTH, EDUCATION, AND WELFARE; REGULA-*

14 *TIONS.—The Secretary of the Treasury shall transmit any*

15 *statements, reports, or other information obtained by him*

16 *under this section to the Secretary of Health, Education, and*

17 *Welfare at such times and in such form as the Secretary of*

18 *Health, Education, and Welfare may require in order to car-*

19 *ry out his responsibilities under section 1131 of the Social Se-*

20 *curity Act. The Secretary of the Treasury, after consultation*

21 *with the Secretary of Health, Education, and Welfare, is au-*

22 *thorized to prescribe such regulations as may be necessary to*

23 *carry out the provisions of this section.*

24 *(e) DEFINITION OF ADMINISTRATOR.—For purposes of*

25 *this section, the term "administrator" means the person or*

1 *persons described in section 3(15) of the Welfare and Pen-*
2 *sion Plans Disclosure Act.*
3 *(f) CERTIFICATE OF RIGHTS.—Each plan administra-*
4 *tor filing a registration statement under subsection (a) shall*
5 *also furnish to each individual described in paragraph (2) of*
6 *that subsection, within the time prescribed for the filing of*
7 *the registration statement, a statement setting forth the infor-*
8 *mation with respect to that individual required in the regis-*
9 *tration statement. At the time he files the registration state-*
10 *ment with the Secretary, the administrator of a plan shall*
11 *furnish evidence satisfactory to the Secretary that he has com-*
12 *plied with the requirements of this subsection.*
13 *SEC. 152. DUTIES OF SECRETARY OF HEALTH, EDUCA-*
14 *TION AND WELFARE.*
15 *Title XI of the Social Security Act (relating to general*
16 *provisions) is amended by adding at the end of part A there-*
17 *of the following new section:*
18 *"NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH*
19 *RESPECT TO VESTED PENSION BENEFITS*
20 *"SEC. 1131. (a) Whenever the Secretary makes a find-*
21 *ing of fact and a decision as to—*
22 *"(1) the entitlement of any individual to monthly*
23 *insurance benefits under section 202, 223, or 228,*
24 *"(2) the entitlement of any individual to a lump-*
25 *sum death payment payable under section 202(i) on*

1 *account of the death of any person to whom such indi-*
2 *vidual is related by blood, marriage, or adoption, or*
3 *"(3) the entitlement under section 226 of any*
4 *individual to hospital insurance benefits under part A of*
5 *title XVIII,*
6 *or upon request made by any individual with respect to*
7 *whom the Secretary holds information obtained under sec-*
8 *tion 151 of the Retirement Income Security for Employees*
9 *Act, he shall furnish to such individual any information re-*
10 *garding any vested right to a pension benefit acquired by the*
11 *Secretary pursuant to such section with respect to the person*
12 *on whose wages and self-employment income entitlement*
13 *(or claim of entitlement) is based.*
14 *"(b)(1) For purposes of section 201(g)(1), expenses*
15 *incurred in the administration of subsection (a) shall be*
16 *deemed to be expenses incurred for the administration of the*
17 *Federal old-age and survivors insurance program.*
18 *"(2) There are hereby authorized to be appropriated*
19 *to the Federal Old-Age and Survivors Insurance Trust*
20 *Fund for each fiscal year (commencing with the fiscal year*
21 *ending June 30, 1974) such sums as the Secretary deems*
22 *necessary on account of additional administrative expenses*
23 *resulting from the enactment of the provisions of subsection*
24 *(a).".*

1 *SEC. 153. EFFECTIVE DATE.*

2 *This part shall take effect upon the date of enactment*
3 *of this Act, but the requirements of section 151 (a) and (b)*
4 *shall apply only with respect to plan years ending after*
5 *December 31, 1973.*

6 *SEC. 154. AUTHORIZATION OF APPROPRIATIONS FOR*
7 *DEPARTMENT OF LABOR.*

8 *There are authorized to be appropriated such sums as*
9 *may be necessary to enable the Secretary of Labor to carry*
10 *out his functions and duties under this Act.*

11 *TITLE II—PARTICIPATION; VEST-*
12 *ING; FUNDING; CERTAIN*
13 *BENEFITS*

14 *PART A—PARTICIPATION*

15 *SEC. 201. MINIMUM STANDARDS RELATING TO PARTICI-*
16 *PATION.*

17 *(a) IN GENERAL.—Part I of subchapter D of chapter*
18 *1 (relating to pensions, etc., plans) is amended by inserting*
19 *at the end thereof the following new subpart:*

20 *"Subpart B—Special Rules*

"Sec. 410. Minimum standards relating to participation.

21 *"SEC. 410. MINIMUM STANDARDS RELATING TO PARTICI-*
22 *PATION.*

23 *"(a) PARTICIPATION.—*

24 *"(1) MAXIMUM CONDITION. A trust shall not*

1 *constitute a qualified trust under section 401(a) if the*
2 *plan of which it is a part requires, as a condition of*
3 *participation in the plan, that an employee have a*
4 *period of service with the employer (including, to the*
5 *extent provided in regulations prescribed by the Secre-*
6 *tary or his delegate, a predecessor of the employer)*
7 *extending beyond the later of—*
8 *"(A) one year of service, or*
9 *"(B) the date on which the employee attains*
10 *the age of 30 years.*
11 *"(2) DEFINITIONS.—For purposes of this subsec-*
12 *tion—*
13 *"(A) YEAR OF SERVICE.—The term 'year of*
14 *service' means a calendar, plan, or fiscal year*
15 *(whichever is applied on a consistent basis under*
16 *the plan) during which the employee is employed*
17 *by the employer for more than 5 months.*
18 *"(B) MONTH.—The term 'month' means any*
19 *calendar month during which the employee is em-*
20 *ployed for at least 80 hours of employment.*
21 *"(b) ELIGIBILITY.—*
22 *"(1) IN GENERAL.—A trust shall not constitute a*
23 *qualified trust under section 401(a) unless the trust,*
24 *or two or more trusts, or the trust or trusts and annuity*
25 *plan or plans are designated by the employer as con-*

1 *stituting parts of a plan intended to qualify under section*
2 *401(a) which benefits either—*
3 *"(A) 70 percent or more of all the employees,*
4 *or 80 percent or more of all the employees who are*
5 *eligible to benefit under the plan if 70 percent or*
6 *more of all the employees are eligible to benefit under*
7 *the plan, excluding in each case employees who have*
8 *not satisfied the minimum age and service require-*
9 *ments, if any, prescribed by the plan as a condition*
10 *of participation, employees whose customary em-*
11 *ployment is for not more than 80 hours in any one*
12 *month, and employees whose customary employ-*
13 *ment is for not more than 5 months in any calendar,*
14 *plan, or fiscal year (whichever is applied on a con-*
15 *sistent basis under the plan), or*
16 *"(B) such employees as qualify under a clas-*
17 *sification set up by the employer and found by the*
18 *Secretary or his delegate not to be discriminatory in*
19 *favor of employees who are officers, shareholders, or*
20 *highly compensated employees.*
21 *"(2) EXCLUSION OF CERTAIN EMPLOYEES.—For*
22 *the purpose of determining whether a trust constitutes a*
23 *qualified trust under paragraph (1), there shall be ex-*
24 *cluded from consideration—*

1 *"(A) employees who are included in a unit of*
2 *employees covered by an agreement which the Sec-*
3 *retary or his delegate finds to be a collective bar-*
4 *gaining agreeement between employee representa-*
5 *tives and one or more employees, if such agreement*
6 *does not provide that such employees are to be*
7 *included in the plan, and if there is evidence that*
8 *retirement benefits were the subject of good faith*
9 *bargaining between such employee representatives*
10 *and such employer or employers during the most*
11 *recently concluded contract negotiations which were*
12 *the subject of bargaining between such representatives*
13 *and the employer or employers, and*
14 *"(B) employees who are nonresident aliens*
15 *who have no earned income (within the meaning of*
16 *section 911(b)) from sources within the United*
17 *States (within the meaning of section 861(a)(3)).*
18 *"(3) AFFILIATED GROUPS OF EMPLOYERS.—For*
19 *purposes of this subsection, section 401(a)(4), and sec-*
20 *tion 411, all employees of all corporations that are mem-*
21 *bers of a controlled group of corporations (within the*
22 *meaning of section 1563(a)) shall be deemed to be*
23 *employed by a single employer."*

1 *(b) Conforming Amendments.—*

2 *(1) Section 401(a) (relating to requirements for*
3 *qualification) is amended by—*

4 *(A) striking out paragraph (3) and inserting*
5 *in lieu thereof:*

6 *"(3) if the plan of which such trust is a part meets*
7 *the requirements of section 410 (relating to minimum*
8 *standards relating to participation); and", and*

9 *(B) striking out "paragraph (3)(B) or (4)"*
10 *in paragraph (5) and inserting in lieu thereof*
11 *"paragraph (4) or section 410(b) (without regard*
12 *to paragraph (1)(A) thereof)".*

13 *(2) Section 406(b)(1) (relating to certain em-*
14 *ployees of foreign subsidiaries) is amended by striking*
15 *out "paragraphs (3)(B) and (4) of section 401(a)"*
16 *and inserting in lieu thereof "paragraph (4) of section*
17 *401(a) and subsection (b) of section 410 (without re-*
18 *gard to paragraph (1)(A) thereof)".*

19 *(3) Section 407(b)(1) (relating to certain em-*
20 *ployees of domestic subsidiaries engaged in business out-*
21 *side the United States) is amended by striking out "para-*
22 *graphs (3)(B) and (4) of section 401(a)" and in-*
23 *serting in lieu thereof "paragraph (4) of section 401(a)*
24 *and subsection (b) of section 410 (without regard to*
25 *paragraph (1)(A) thereof)".*

1 *(c) Clerical Amendment.—Part I of subchapter D*
2 *of chapter 1 is amended by inserting after the heading and*
3 *before the table of sections the following:*

"Subpart A. General Rule.
"Subpart B. Special Rules.

4 **"Subpart A—General Rule".**

5 *(d) Effective Date.—*
6 *(1) Except as provided in paragraph (2), the*
7 *amendments made by this section shall apply to plan*
8 *years beginning after the date of enactment of this Act.*
9 *(2) In the case of a plan in existence on the date*
10 *of enactment of this Act, the amendments made by this*
11 *section shall apply—*
12 *(A) to plan years beginning after December*
13 *31, 1975, or*
14 *(B) if later (in the case of a plan maintained*
15 *pursuant to an agreement which the Secretary of*
16 *the Treasury finds to be a collective-bargaining*
17 *agreement between employee representatives and*
18 *one or more employers), to plan years beginning*
19 *after the earlier of—*
20 *(i) the date on which the agreement ter-*
21 *minates (determined without regard to any ex-*
22 *tension thereof agreed to after the date of en-*
23 *actment of this Act), or*
24 *(ii) December 31, 1980.*

1 *PART B—VESTING*

2 *SEC. 221. MINIMUM STANDARDS RELATING TO VESTING.*

3 *(a) IN GENERAL.—Subpart B of part I of subchapter*
4 *D of chapter 1 (relating to special rules), as added by sec-*
5 *tion 201 of this Act, is amended by inserting after section*
6 *410 the following new section:*

7 *"SEC. 411. MINIMUM STANDARDS RELATING TO VESTING.*

8 *"(a) GENERAL RULE.—Except as provided in sub-*
9 *section (c), a trust shall not constitute a qualified trust*
10 *under section 401(a) unless the plan of which such trust*
11 *is a part satisfies the requirements of paragraphs (1) and*
12 *(2).*

13 *"(1) EMPLOYEE CONTRIBUTIONS.—A plan satisfies*
14 *the requirements of this paragraph if, under the plan,*
15 *an employee's rights in his accrued benefit derived from*
16 *his own contributions are nonforfeitable.*

17 *"(2) EMPLOYER CONTRIBUTIONS.—*

18 *"(A) NONFORFEITABLE PERCENTAGE.—A*
19 *plan satisfies the requirements of this paragraph if,*
20 *under the plan, after 5 years of service (3 of which*
21 *are consecutive) with an employer, an employee*
22 *has a right to a percentage of his accrued benefit*
23 *derived from employer contributions which is non-*
24 *forfeitable other than by reason of death. The per-*

1 *centage shall not be less than the percentage deter-*
2 *mined under the following table:*

"Years of service	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

3 *"(B) YEAR OF SERVICE.—For purposes of this*
4 *paragraph, the term 'year of service with the em-*
5 *ployer' means—*
6 *"(i) with respect to plan years ending*
7 *before January 1, 1982, a year in which an*
8 *employee is employed more than a number of*
9 *months (for not less than a number of hours*
10 *in each such month) prescribed in regulations*
11 *promulgated by the Secretary or his delegate*
12 *after consultation with the Secretary of Labor,*
13 *and shall include service with a predecessor of*
14 *the employer to the extent provided in regula-*
15 *tions prescribed by the Secretary or his dele-*
16 *gate; and*
17 *"(ii) with respect to plan years ending*
18 *after December 31, 1981, any calendar, plan,*
19 *or fiscal year (whichever is applied on a con-*

sistent basis under the plan) in which an employee is employed for more than 5 months (if he is employed at least 80 hours in each of such 5 months) in such year with the employer who adopted the plan (including, to the extent provided in regulations prescribed by the Secretary or his delegate, a predecessor of the employer).

"(C) TENTH YEAR VESTING FOR CERTAIN PLANS.—Paragraph (A) shall not apply to a trust which meets the requirements of section 401(a) and is exempt from tax under section 501(a) or a plan which meets the requirements of section 404 (b)(2), if such trust or plan was in existence and met such requirements on the date of enactment of the Retirement Income Security for Employees Act and if the plan of which such trust is a part, or such plan, provides on and after such date that each employee's rights to or derived from employer contributions become completely nonforfeitable (other than by reason of death) no later than the end of the tenth year of service of the employee with the employer who maintains the plan. A plan described in this subparagraph meets the requirements of this paragraph.

1 *"(D) SPECIAL RULES.—For purposes of de-*
2 *termining the nonforfeitable percentage—*
3 *"(i) no year of service which begins more*
4 *than 5 years prior to the beginning of the year*
5 *in which an employee is first eligible to par-*
6 *ticipate in the plan shall be considered, unless*
7 *with respect to such year, the employee makes*
8 *contributions under the plan or the employer*
9 *makes contributions under the plan on behalf*
10 *of such employee,*
11 *"(ii) years of service shall include any*
12 *years beginning on or after the date the plan*
13 *was first effective, and*
14 *"(iii) years of service beginning prior to*
15 *the enactment of the Retirement Income Se-*
16 *curity for Employees Act and on or after*
17 *the date on which the plan was first effective*
18 *(or any amendment thereto was first effective)*
19 *shall be considered.*
20 *"(b) DEFINITIONS AND RULES RELATING TO AC-*
21 *CRUED BENEFITS.—*
22 *"(1) EMPLOYEE'S ACCRUED BENEFIT.—*
23 *"(A) IN GENERAL.—For purposes of this*
24 *section, an employee's accrued benefit as of any*
25 *applicable date is—*

1 *"(i) in the case of a defined benefit plan,*
2 *except as provided under paragraph (3), the*
3 *annual benefit commencing at normal retire-*
4 *ment age to which he would be entitled under*
5 *the plan as in effect on such date if he continued*
6 *to earn annually until normal retirement age the*
7 *same rate of compensation upon which his bene-*
8 *fits would be computed under the plan, deter-*
9 *mined as if he had attained normal retirement*
10 *age on the applicable date, multiplied by a*
11 *fraction, the numerator of which is the total*
12 *number of his years of active participation in*
13 *the plan (including, to the extent provided in*
14 *regulations prescribed by the Secretary or his*
15 *delegate, a predecessor plan) as of such date,*
16 *and the denominator of which is the total num-*
17 *ber of years he would have actively participated*
18 *in such plan as of normal retirement age if he*
19 *had continued to be an active participant in the*
20 *plan until attaining such age, or*
21 *"(ii) in the case of a plan other than a*
22 *defined benefit plan, the balance of the account*
23 *or accounts for such employee as of that date.*
24 *"(B) LIMITATION.—The numerator of the*

1 *fraction referred to in subparagraph (A)(i) shall*
2 *not exceed the denominator.*
3 *"(C) DEFINED BENEFIT PLANS GENERALLY.—*
4 *In the case of a defined benefit plan which permits*
5 *voluntary employee contributions, the portion of an*
6 *employee's accrued benefit derived from such con-*
7 *tributions shall be treated as an accrued benefit*
8 *derived from employee contributions under a plan*
9 *other than a defined benefit plan.*
10 *"(D) CERTAIN INSURED DEFINED BENEFIT*
11 *PLANS.—In the case of a defined benefit plan which*
12 *is funded exclusively by the purchase of individual*
13 *insurance contracts, an employee's accrued benefit*
14 *at any date shall be equal to the benefit which*
15 *might be purchased by the cash surrender value of*
16 *the policy on the applicable date. An employee's*
17 *accrued benefit under such a plan shall not be de-*
18 *termined under this subparagraph unless the plan*
19 *satisfies the requirements of paragraphs (1) through*
20 *(6) of section 4971(e) (relating to certain insured*
21 *plans).*
22 *"(E) VARIABLE ANNUITY PLANS.—In the*
23 *case of a variable annuity plan, an employee's ac-*
24 *crued benefit at any date shall be determined in ac-*

1 *cordance with regulations prescribed by the Sec-*
2 *retary or his delegate.*
3 *"(2) ALLOCATION OF ACCRUED BENEFIT BE-*
4 *TWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS.—*
5 *For purposes of this section, an employee's accrued bene-*
6 *fit derived from employer contributions as of any ap-*
7 *plicable date is the excess of the accrued benefit deter-*
8 *mined under paragraph (1) for such employee as of*
9 *such applicable date over the amount of the accrued*
10 *benefit derived from contributions made by such em-*
11 *ployee as of such date. In the case of a plan other than a*
12 *defined benefit plan, the amount of accrued benefit de-*
13 *rived from contributions made by an employee is the*
14 *balance of the employee's separate account consisting*
15 *only of his contributions and the income, expenses, gains,*
16 *and losses attributable thereto or, if a separate account*
17 *is not maintained with respect to an employee's contribu-*
18 *tions under such a plan, is an amount which bears the*
19 *same ratio to his total accrued benefits as the total amount*
20 *of the employee's contributions (less withdrawals) bears*
21 *to the sum of such contributions (less withdrawals) and*
22 *the contributions made on his behalf by the employer*
23 *(less withdrawals). In the case of a defined benefit plan*
24 *providing an annual benefit in the form of a single life*
25 *annuity commencing at normal retirement age without*

ancillary benefits, the amount of the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor. For purposes of the preceding sentence, the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary or his delegate. For purposes of this paragraph, the term 'accumulated contributions' means the total of—

"(A) all mandatory contributions made by the employee,

"(B) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

"(C) interest on the sum of the amounts determined under subparagraphs (A) and (B) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to

1 *which subsection (a)(2) applies (by reason of the*
2 *applicable effective date) to the date upon which*
3 *the employee would attain normal retirement age.*
4 *The accrued benefits derived from contributions made*
5 *by an employee shall not exceed the accrued benefits*
6 *determined under paragraph (1). The Secretary or his*
7 *delegate is authorized to adjust by regulation the con-*
8 *version factor, the rate of interest described in subpara-*
9 *graph (C), or both, from time to time as he may deem*
10 *necessary. The rate of interest shall bear the relation-*
11 *ship to 5 percent which the Secretary or his delegate*
12 *determines to be comparable to the relationship which*
13 *the long-term money rates and investment yields for the*
14 *last 10 calendar year period ending at least 12 months*
15 *prior to the beginning of the plan year bear to the long-*
16 *term money rates and investment yields for the 10 cal-*
17 *endar year period 1964 through 1973. No such adjust-*
18 *ment shall be effective for a plan year beginning before*
19 *the expiration of 1 year after such adjustment is deter-*
20 *mined and published. For purposes of this paragraph,*
21 *the term 'mandatory contributions' means amounts ac-*
22 *tually contributed to the plan by the employee which*
23 *are required as a condition of employment, as a condi-*
24 *tion of participation in such plan, or as a condition of*

1 *obtaining benefits under the plan attributable to employer*
2 *contributions.*
3 *"(3) For purposes of this section, in the case of*
4 *any defined benefit plan, if an employee's accrued bene-*
5 *fit is to be determined as an amount other than an*
6 *annual benefit commencing at normal retirement age,*
7 *or if the amount of accrued benefit derived from contri-*
8 *butions made by an employee is to be determined with*
9 *respect to a benefit other than an annual benefit in the*
10 *form of a single life annuity commencing at normal re-*
11 *tirement age without ancillary benefits, the employee's*
12 *accrued benefit, or the amount of accrued benefit derived*
13 *from contributions made by an employee, as the case*
14 *may be, shall be the actuarial equivalent of such benefit*
15 *or amount determined under paragraph (1) or (2).*
16 *"(c) SPECIAL RULES.—*
17 *"(1) PROHIBITED DISCRIMINATION.—Subsection*
18 *(a) shall not apply to benefits which may not be pro-*
19 *vided for designated employees in the event of early*
20 *termination of the plan under provisions adopted to*
21 *preclude discrimination prohibited by section 401(a)*
22 *(4).*
23 *"(2) CLASS YEAR PLANS.—The requirements of*
24 *subsection (a)(2) shall be deemed to be satisfied in the*
25 *case of a class year plan if such plan provides that 100*

percent of each employee's rights to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the fifth plan year following the plan year for which such contributions were made (within the meaning of section 404(a)(6)). For purposes of this section, the term 'class year plan' means a profit-sharing or stock bonus plan which provides for the separate nonforfeitability of employees rights to or derived from the contributions of each plan year.

"(3) VOLUNTARY WITHDRAWALS FROM CERTAIN PLANS.—A trust which is a part of a plan to which employees make mandatory contributions (within the meaning of subsection (b)(2)) shall not be disqualified under this section merely because an employee's rights to his accrued benefit derived from employer contributions under the plan (or employer contributions for a particular plan year, in the case of a class year plan) are forfeitable if, by reason of his separation from the service or termination of his active participation in the plan, he voluntarily withdraws all or part of the mandatory contributions made by him (or all or a part of the mandatory contributions made by him for that particular plan year. in the case of a class year plan).

1 *"(4) TERMINATION OR PARTIAL TERMINATION.—*
2 *Notwithstanding the provisions of subsection (a); a*
3 *trust shall not constitute a qualified trust under section*
4 *401(a) unless the plan of which such trust is a part pro-*
5 *vides that, upon its termination or partial termination,*
6 *the rights of all employees to benefits accrued to the date*
7 *of such termination or partial termination, to the extent*
8 *then funded, or the amounts credited to the employees'*
9 *accounts, are nonforfeitable. This paragraph shall not*
10 *apply to benefits or contributions which, under provi-*
11 *sions of the plan adopted to preclude the discrimination*
12 *prohibited by section 401(a)(4), may not be used for*
13 *designated employees in the event of early termination of*
14 *the plan.*
15 *"(5) DISCRIMINATION.—A plan shall not be*
16 *deemed to have satisfied the requirements of section*
17 *401(a)(4) merely because it satisfies the requirements*
18 *of this section.*
19 *"(d) RECORDKEEPING REQUIREMENTS.—*
20 *"(1) SINGLE EMPLOYER PLAN.—Except as pro-*
21 *vided by paragraph (2), every employer shall, in ac-*
22 *cordance with regulations prescribed by the Secretary*
23 *or his delegate, maintain records with respect to each*
24 *of his employees sufficient to determine the benefits due*
25 *or which may become due to such employees.*

1 "(2) MORE THAN ONE EMPLOYER.—If more than
2 one employer adopts a plan, each such employer shall,
3 in accordance with regulations prescribed by the Sec-
4 retary or his delegate, furnish to the plan administrator
5 (within the meaning of section 3(15) of the Welfare
6 and Pension Plans Disclosure Act) the information
7 necessary for the administrator to maintain the records
8 required by paragraph (1). Such administrator shall
9 maintain the records required by paragraph (1).
10 "(e) CROSS REFERENCES.—

"For penalty for failure to meet requirements of subsection (a)(2)(A), see section 4973.
"For penalty for failure to furnish the information or maintain the records required under this section, see section 6690.".

11 (b) PENALTY FOR FAILURE TO FURNISH INFORMA-
12 TION.—Subchapter B of chapter 68 (relating to assessable
13 penalties) is amended by adding at the end thereof the fol-
14 lowing new section:

15 "SEC. 6690. FAILURE TO FURNISH INFORMATION OR
16 MAINTAIN RECORDS.

17 "(a) CIVIL PENALTY.—If any person who is required,
18 under section 411, to furnish information or maintain rec-
19 ords for an employee fails to comply with such requirement
20 he shall pay a penalty of $10 for each employee with respect
21 to whom such failure occurs, unless it is shown that such
22 failure is due to reasonable cause.

1 *"(b) Deficiency Procedures Not To Apply.—*
2 *Subchapter B of chapter 63 (relating to deficiency proce-*
3 *dures for income, estate, gift, and certain excise taxes) shall*
4 *not apply to the assessment or collection of any penalty im-*
5 *posed by subsection (a)."*.

6 *(c) Comparability of Plans.—Section 401(a) (re-*
7 *lating to qualified pension, etc., plans) is amended by adding*
8 *at the end of paragraph (5) the following: "For purposes*
9 *of determining whether two or more plans of an employer*
10 *satisfy the requirements of paragraph (4) when considered*
11 *as a single plan, if the amount of contributions on behalf of*
12 *the employees allowed as a deduction under section 404 for*
13 *the taxable year with respect to such plans, taken together,*
14 *bears a uniform relationship to the total compensation, or the*
15 *basic or regular rate of compensation, of such employees, the*
16 *plans shall not be considered discriminatory merely because*
17 *the rights of employees to, or derived from, the employer*
18 *contributions under the separate plans do not become nonfor-*
19 *feitable at the same rate. For purposes of determining*
20 *whether two or more plans of an employer satisfy the require-*
21 *ments of paragraph (4) when considered as a single plan, if*
22 *the employees' rights to benefits under the separate plans do*
23 *not become nonforfeitable at the same rate, but the levels of*
24 *benefits provided by the separate plans satisfy the require-*
25 *ments of regulations prescribed by the Secretary or his dele-*

1 *gate to take account of the differences in such rates, the plans*
2 *shall not be considered not to satisfy the requirements of*
3 *paragraph (4) merely because of the differences in such*
4 *rates.".*

5 *(d) CONFORMING AMENDMENT.—Paragraph (7) of*
6 *section 401(a) (relating to requirements for qualification) is*
7 *amended to read as follows:*

8 *"(7) A trust shall not constitute a qualified trust*
9 *under this section unless the plan of which such trust is*
10 *a part meets the requirements of section 411 (relating to*
11 *vesting).".*

12 *(e) CLERICAL AMENDMENTS.—*

13 *(1) The table of sections for subpart B of part I*
14 *of subchapter D of chapter 1, as added by section 201, is*
15 *amended by inserting at the end thereof the following*
16 *new item:*

"Sec. 411. Minimum standards relating to vesting.".

17 *(2) The table of sections for subchapter B of chap-*
18 *ter 68 is amended—*

19 *(A) by striking out the item relating to the*
20 *section captioned "Assessable penalties with respect*
21 *to information required to be furnished under sec-*
22 *tion 7654" and inserting in lieu thereof:*

"Sec. 6688. Assessable penalties with respect to information required to be furnished under section 7654.",

23 *and*

(B) by inserting at the end thereof the following new item:

"Sec. 6690. Failure to furnish information or maintain records.".

(3) Subchapter B of chapter 68 is amended by striking out the heading of the section immediately preceding section 6689 and inserting in lieu thereof:

"SEC. 6688. ASSESSABLE PENALTIES WITH RESPECT TO INFORMATION REQUIRED TO BE FURNISHED UNDER SECTION 7654.".

(f) EFFECTIVE DATES.—

(1) Except as provided in paragraphs (2), (3), and (4), the amendments made by this section shall apply to plan years beginning after the date of enactment of this Act.

(2) In the case of a plan (other than a plan described in paragraph (3)) in existence on the date of enactment of this Act, the amendments made by this section shall apply to plan years beginning after December 31, 1975; however, if the Secretary of Labor determines that the application of any or all of such amendments to a plan for those plan years would create substantial economic hardship for that plan and certifies his determination to the Secretary of the Treasury before that date, the amendments made by this section with

1 *respect to which the Secretary of Labor makes such*
2 *determination shall apply only to plan years of that*
3 *plan beginning after December 31 of a year not later*
4 *than 1981 determined by the Secretary of Labor and*
5 *certified to the administrator of the plan and to the*
6 *Secretary of the Treasury. For purposes of this para-*
7 *graph the term "substantial economic hardship" in-*
8 *cludes, but is not limited to, a finding by the Secretary*
9 *that—*
10 *(A) there is a substantial risk that, if such*
11 *amendment or amendments apply to the plan with-*
12 *out any extension, the voluntary continuation of the*
13 *plan will be unlikely;*
14 *(B) the plan will be unable to discharge its*
15 *contractual obligations for the payment of benefits;*
16 *or*
17 *(C) application of the amendments to the plan*
18 *without an extension is likely to cause a substantial*
19 *reduction in the number of plan participants or per-*
20 *sons employed by the employer or employers con-*
21 *tributing to or under the plan.*
22 *Benefits under a plan may not be increased by amend-*
23 *ment if an extension under this paragraph is in effect*
24 *with respect to the plan on the effective date of amend-*
25 *ment. If a plan is amended in violation of the provisions*

1 *of this paragraph, any such extension shall not apply*
2 *to plan years beginning after the plan year in which*
3 *such amendment becomes effective.*
4 *(3) The amendments made by this section shall*
5 *apply to plan years beginning after December 31, 1980,*
6 *in the case of a plan established and maintained by the*
7 *United States or a State or political subdivision thereof,*
8 *the District of Columbia, or an agency or instrumentality*
9 *of the United States or of a State or a political subdivi-*
10 *sion thereof, or of the District of Columbia.*
11 ***SEC. 222. CERTAIN NONQUALIFIED PLANS.***
12 *(a) GENERAL RULE.—Section 404 (relating to deduc-*
13 *tion for contributions to an employee's trust, etc.) is*
14 *amended—*
15 *(1) by inserting in subsection (a)(5) "or sub-*
16 *section (g)," after "or 3,", and*
17 *(2) by inserting at the end thereof the following*
18 *new subsection:*
19 *"(g) CERTAIN PLANS.—No deduction shall be allowed*
20 *under this section for a contribution by an employer to a trust*
21 *created or organized in the United States which is not a trust*
22 *described in section 401(a) (or a contribution to or under*
23 *a plan which does not satisfy the requirements of subsection*
24 *(a)(2)) if the plan of which such trust is a part (or such*
25 *plan)—*

1 *"(1) is established under a written governing*
2 *instrument,*
3 *"(2) provides a determinable retirement benefit*
4 *for an employee or his beneficiaries which is not re-*
5 *quired, under the plan, to be paid in full to the employee*
6 *or his beneficiaries within 5 years after such benefit*
7 *accrues, and*
8 *"(3) in the case of a plan of an employer which is*
9 *a corporation, provides for the deferral of compensation*
10 *of any employee who—*
11 *"(A) is not an officer of such corporation, and*
12 *"(B) owns (or is considered as owning (with-*
13 *in the meaning of section 1563(e))) stock possess-*
14 *ing less than 5 percent of the total combined voting*
15 *power.".*
16 *(b) EFFECTIVE DATE.—The amendments made by this*
17 *section shall apply for taxable years beginning after Decem-*
18 *ber 31, 1975.*

19 *PART C—FUNDING*

20 *SEC. 241. MINIMUM STANDARDS RELATING TO FUNDING.*
21 *(a) EXCISE TAX ON FAILURE TO MEET MINIMUM*
22 *FUNDING STANDARD.—Subtitle D (relating to miscellaneous*
23 *excise taxes) is amended by adding at the end thereof the*
24 *following new chapter:*

1 *"CHAPTER 44—QUALIFIED PENSION, ETC.,*
2 *PLANS*

"Sec. 4971. Minimum standards relating to funding.
"Sec. 4972. Taxes on failure to meet minimum funding standard.
"Sec. 4973. Taxes on failure to meet minimum vesting standard.

3 *"SEC. 4971. MINIMUM STANDARDS RELATING TO FUND-*
4 *ING.*

5 *"(a) General Rule.—This section applies to a plan*
6 *to which part I of subchapter D of chapter 1 applies, which—*
7 *"(1) has satisfied (or has been determined by the*
8 *Secretary or his delegate to have satisfied) the require-*
9 *ments of section 404(a)(2), or*
10 *"(2) includes a trust which has qualified (or has*
11 *been determined by the Secretary or his delegate to have*
12 *qualified) under section 401(a).*
13 *A plan to which this section applies shall have satisfied the*
14 *minimum funding standard provided by this subsection for a*
15 *plan year at the end of which the plan does not have an ac-*
16 *cumlated funding deficiency. For purposes of this section*
17 *and section 4972, the term 'accumulated funding deficiency'*
18 *means (except in the case of a plan described in subsection*
19 *(g)) the excess of the total charges to the funding stand-*
20 *ard account for all plan years over the total credits to such*
21 *account for such years.*

1 "(b) FUNDING STANDARD ACCOUNT.—

2 "(1) ACCOUNT REQUIRED.—Each plan to which
3 this section applies shall establish and maintain a fund-
4 ing standard account. Such account shall be credited
5 and charged solely as provided in this section.

6 "(2) CHARGES TO ACCOUNT.—For a plan year,
7 the funding standard account shall be charged with the
8 amount described in subsection (e) (if applicable), or
9 the sum of—

10 "(A) the normal cost of the plan for the plan
11 year,

12 "(B) the amounts necessary to amortize in
13 not less than equal annual installments (computed
14 on the basis of plan years)——

15 "(i) the initial unfunded past service
16 liability under the plan, over a period of 30
17 plan years (or the period determined under
18 subsection (d)(2)) until fully amortized,

19 "(ii) separately, with respect to each plan
20 year, the net increase (if any) in unfunded
21 past service liability under the plan arising
22 from plan amendments adopted in such year (if
23 as a result of such plan amendments the net
24 unfunded past service liability under the plan
25 for such year increases by 5 percent or more),

1 *over a period of 30 plan years, until fully*
2 *amortized.*
3 *"(iii) the net experience loss (if any) for*
4 *each plan year, over the lesser of a period of*
5 *15 plan years or of a number of years equal*
6 *to the average remaining service life of partic-*
7 *ipants in the plan at the end of such plan year,*
8 *until fully amortized, and*
9 *"(iv) separately, with respect to each plan*
10 *year, the net increase (if any) in unfunded*
11 *past service liability under the plan arising*
12 *from plan amendments adopted in such year*
13 *(other than net increases required to be amor-*
14 *tized under clause (ii)) over the lesser of a*
15 *period of 15 plan years or of a number of years*
16 *equal to the average remaining service life of*
17 *participants in the plan at the end of such plan*
18 *year, until fully amortized, and*
19 *"(C) the amount necessary to amortize in*
20 *equal payments each waived funding deficiency*
21 *(within the meaning of subsection (d)) for each*
22 *prior plan year over a period of 10 plan years, un-*
23 *til fully amortized.*
24 *For purposes of subparagraph (B), in the case of*
25 *a plan in existence on the effective date of this section,*

1 *the initial unfunded past service liability under the plan*
2 *shall be an amount equal to the unfunded past service*
3 *liability on such date.*
4 *"(3) CREDITS TO ACCOUNT.—For a plan year,*
5 *the funding standard account of a plan shall be credited*
6 *with the sum of—*
7 *"(A) the amount considered contributed by the*
8 *employer to or under the plan (within the meaning*
9 *of section 404(a)(6)) for the plan year,*
10 *"(B) the amount necessary to amortize in*
11 *equal payments—*
12 *"(i) the net experience gain (if any) for*
13 *each plan year over the lesser of a period of 15*
14 *plan years or a number of years equal to the*
15 *average remaining service life of participants*
16 *in the plan at the end of such plan year, until*
17 *fully amortized,*
18 *"(ii) separately, with respect to each plan*
19 *year, the net decrease (if any) in unfunded past*
20 *service liability under the plan arising from plan*
21 *amendments adopted in such year (other than*
22 *net decreases required to be amortized under*
23 *clause (iii)) over the lesser of a period of 15*
24 *plan years or a number of years equal to the*
25 *average remaining service life of participants*

in the plan at the end of such plan year, until fully amortized,

"(iii) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in each plan year (if as a result of such plan amendments the net unfunded liability under the plan for such year decreases by more than 5 percent) over a period of 30 plan years, until fully amortized, and

"(C) the amount of the waived funding deficiency (within the meaning of subsection (d)) for the plan year.

"(4) INTEREST.—The funding standard account shall be charged or credited with interest (at the rate of interest used under the plan to determine costs) with respect to the balance of such account.

For purposes of this section, normal costs, past service liabilities, and experience gains and losses, shall be determined under the funding method used to determine costs under the plan, and the actuarial assumptions used to determine costs and liabilities under the plan must in the aggregate be reasonable.

1 *"(c) Definitions and Special Rules:—*

2 *"(1) Full funding.—If, as of the end of a plan*
3 *year, a plan would have an accumulated funding de-*
4 *ficiency (but for the application of this paragraph)*
5 *in excess of the full funding limitation—*

6 *"(A) the funding standard account shall be*
7 *credited with the amount of such excess, and*

8 *"(B) all amounts described in paragraphs (2)*
9 *(B) and (C) and (3) (A) and (B) of subsection*
10 *(b) which are required to be amortized shall be*
11 *considered fully amortized for purposes of such*
12 *paragraphs.*

13 *For purposes of this paragraph, a plan shall be consid-*
14 *ered fully funded if the accrued liability (including*
15 *normal cost) under the plan (determine under the fund-*
16 *ing method used by the plan to determine normal cost*
17 *for such year if such liability can be directly calculated*
18 *under such funding method, or determined under the*
19 *entry age normal funding method if such liability can-*
20 *not be so calculated under the funding method so used*
21 *by the plan) is not greater than the value of the assets*
22 *of the plan (determined, in accordance with regulations*
23 *prescribed by the Secretary or his delegate, on the basis*
24 *of average value for 5 or fewer years) on the valuation*
25 *date of the plan for such year.*

1 "(2) COMPUTATION OF NET EXPERIENCE GAINS
2 AND LOSSES.—*In computing net experience gains and*
3 *losses for a plan year, the value of the assets held under*
4 *a plan shall be determined (in accordance with regula-*
5 *tions prescribed by the Secretary or his delegate) on the*
6 *basis of average values for 5 or fewer years.*
7 "(3) CHANGE IN ACTUARIAL ASSUMPTIONS, SO-
8 CIAL SECURITY, ETC., BENEFITS.—*For purposes of this*
9 *section, all costs liabilities, interest rates, valuations of*
10 *assets, and other factors under the plan shall be deter-*
11 *mined on the basis of actuarial assumptions which in the*
12 *aggregate, are reasonable, and, if a change in the funding*
13 *method or actuarial assumptions used under the plan, a*
14 *change in benefits under the Social Security Act or other*
15 *retirement benefits created under State or Federal law,*
16 *or a change in the definition of the term 'wages' under*
17 *section 3121, results in an increase or decrease in accrued*
18 *liability under a plan, such increase or decrease shall be*
19 *treated as an experience loss or gain. If a plan changes*
20 *its funding method, the new funding method shall be-*
21 *come the funding method used to determine costs and*
22 *liabilities under the plan only if the change is approved*
23 *by the Secretary or his delegate. The plan year of a*
24 *plan may be changed only if the change is approved*
25 *by the Secretary or his delegate.*

1 *"(d) WAIVER OF MINIMUM FUNDING STANDARD.—*
2 *"(1) IN GENERAL.—If an employer is unable to*
3 *satisfy the minimum funding standard for a plan year*
4 *without substantial business hardship, the Secretary or*
5 *his delegate is authorized to waive the requirements of*
6 *subsection (a) for such year with respect to all or any*
7 *portion of the minimum funding standard except the*
8 *portion thereof determined under subsection (b)(2)*
9 *(C). The Secretary or his delegate shall not waive the*
10 *minimum funding standard with respect to a plan for*
11 *more than 5 of any 10 consecutive plan years. For pur-*
12 *poses of this section, the term 'waived funding deficiency'*
13 *means the portion of the minimum funding standards (de-*
14 *termined without regard to subsection (b)(3)(C)) for*
15 *a plan year waived by the Secretary or his delegate and*
16 *not satisfied by employer contributions.*
17 *"(2) MULTIEMPLOYER PLANS.—In the case of a*
18 *multiemployer plan (as defined in section 401(a)(3))*
19 *of the Retirement Income Security for Employees*
20 *Act—*
21 *"(A) the term '40 plan years' shall be sub-*
22 *stituted for the term '30 plan years' wherever it*
23 *appears in subsection (b); and*
24 *"(B) if 10 percent or more of the number of*
25 *employers contributing to or under the plan demon-*

1 *strate to the satisfaction of the Secretary of Labor*
2 *that they would experience substantial economic*
3 *hardship if required to contribute the amount neces-*
4 *sary to amortize in equal payments any unfunded*
5 *liability (described in clause (i) or (ii) of sub-*
6 *section (b)(2)B)) of such plan over a period of*
7 *40 years until fully amortized, then the 40-year pe-*
8 *riod described in such clause shall be extended for*
9 *the period of time (not in excess of 10 years) that*
10 *is certified for this purpose by the Secretary of*
11 *Labor to the Secretary of the Treasury.*
12 *"(3) LIMIT ON INCREASES IN BENEFITS WHILE*
13 *WAIVER OR EXTENSION APPLIES.—Benefits under a*
14 *plan may not be increased by amendment if a waiver*
15 *under paragraph (1) or an extension under paragraph*
16 *(2) is in effect with respect to the plan on the effective*
17 *date of amendment. If a plan is amended in violation of*
18 *the provisions of this paragraph, any such waiver or ex-*
19 *tension shall not apply to plan years beginning after*
20 *the plan year in which such amendment becomes*
21 *effective.*
22 *"(e) CERTAIN INSURED PLANS.—If—*
23 *"(1) a plan is funded exclusively by the purchase*
24 *of individual insurance contracts,*

1 *"(2) such contracts provide for level annual pre-*
2 *mium payments to be paid extending not later than the*
3 *retirement age for each individual participation in the*
4 *plan, and commencing with the date the individual*
5 *became a participant in the plan (or, in the case of*
6 *an increase in benefits, commencing at the time such*
7 *increase becomes effective),*
8 *"(3) benefits provided by the plan are equal to*
9 *the benefits provided under each contract at normal*
10 *retirement age under the plan and are guaranteed by*
11 *an insurance carrier (licensed under the laws of a*
12 *State to do business with the plan) to the extent pre-*
13 *miums have been paid,*
14 *"(4) premiums payable for the plan year, and all*
15 *prior plan years under such contracts have been paid*
16 *before lapse or there is reinstatement of the policy,*
17 *"(5) no rights under such contracts have been*
18 *subject to a security interest at any time during the*
19 *plan year, and*
20 *"(6) no policy loans are outstanding during the*
21 *plan year,*
22 *the amount charged to the funding standard account shall*
23 *be equal to the net premiums paid under the plan.*

1 "(f) PLANS OTHER THAN DEFINED BENEFIT
2 PLANS.—In the case of a profit-sharing, stock bonus, or
3 money purchase plan—
4 "(1) 'normal cost' shall be the amount required
5 under the plan to be contributed for a plan year to fund
6 the current service liability, and
7 "(2) the amounts required to be charged under
8 subsection (b)(2)(B) (i), (ii), and (iv) shall be
9 the amount required under the plan to be contributed on
10 account of past service liability.
11 "(g) EXCEPTIONS.—Subsection (a) shall not apply
12 to—
13 "(1) a plan established or maintained outside the
14 United States primarily for the benefit of employees
15 who are not citizens of the United States if the fund for
16 such plan is maintained outside the United States,
17 "(2) a plan established and maintained solely for
18 the purpose of complying with applicable workmen's
19 compensation or unemployment compensation or dis-
20 ability insurance laws,
21 "(3) a plan established and maintained by a church
22 or by a convention or association of churches which is
23 exempt from tax under section 501(a) of the Internal
24 Revenue Code of 1954,

1 *"(4) a plan established and maintained by a fra-*
2 *ternal society, order, or association described in section*
3 *501(c) (8) or (9) of the Internal Revenue Code of*
4 *1954 if no part of the contributions to or under such*
5 *plan are made by employers of participants in such plan,*
6 *"(5) a plan established or maintained by the Gov-*
7 *ernment of the United States or the government of any*
8 *State or political subdivision thereof, or by an agency or*
9 *instrumentality thereof, or*
10 *"(6) a plan described in section 404(a)(5).*
11 *"(h) REGULATIONS.—The Secretary or his delegate is*
12 *authorized to prescribe such regulations as are necessary to*
13 *carry out the provisions of this section.*
14 *"SEC. 4972. TAXES ON FAILURE TO MEET MINIMUM*
15 *FUNDING STANDARD.*
16 *"(a) INITIAL TAX.—For each taxable year of an em-*
17 *ployer who maintains a plan to which section 4971 applies,*
18 *there is hereby imposed a tax of 5 percent on the amount of*
19 *the accumulated funding deficiency under the plan, deter-*
20 *mined as of the end of the plan year ending with or within*
21 *such taxable year. The tax imposed by this subsection shall*
22 *be paid by the employer responsible for contributing to or*
23 *under the plan the amount described in section 4971(b)*
24 *(3)(A).*

1 *"(b) Additional Tax.—In any case in which an ini-*
2 *tial tax is imposed by subsection (a) on an accumulated fund-*
3 *ing deficiency and such accumulated funding deficiency is*
4 *not corrected within the correction period, there is hereby*
5 *imposed a tax equal to 100 percent of such accumulated*
6 *funding deficiency. The tax imposed by this subsection shall*
7 *be paid by the employer described in subsection (a).*
8 *"(c) Special Rule.—In the case of a multiemployer*
9 *plan, see section 413(b)(6).*
10 *"(d) Definitions.—For purposes of this section—*
11 *"(1) Correct.—The term 'correct' means, with*
12 *respect to an accumulated funding deficiency, the con-*
13 *tribution, to or under the plan, of the amount necessary*
14 *to reduce such accumulated funding deficiency as of the*
15 *end of a plan year in which such deficiency arose to*
16 *zero.*
17 *"(2) Correction period.—The term 'correction*
18 *period' means, with respect to an accumulated funding*
19 *deficiency, the period beginning with the end of a plan*
20 *year in which there is an accumulated funding deficiency*
21 *and ending 90 days after the date of mailing of a notice*
22 *of deficiency with respect to the tax imposed by sub-*
23 *section (a) under section 6212, extended by—*
24 *"(A) any period in which a deficiency cannot*
25 *be assessed under section 6213(a), and*

1 *"(B) any other period which the Secretary or*
2 *his delegate determines is reasonable and necessary*
3 *to permit a reduction of the accumulated funding*
4 *deficiency to zero under this section.*
5 *"(e) REGULATIONS.—The Secretary or his delegate*
6 *may prescribe such regulations as may be necessary to carry*
7 *out the provisions of this section.*
8 *"(f) CROSS REFERENCE.—*

"For disallowance of deduction for taxes paid under this section, see section 275.".

9 *(b) AMENDMENT OF SECTION 404.—Section 404 (re-*
10 *lating to deductions for contributions to an employees' trust,*
11 *etc.) is amended by—*
12 *(1) inserting immediately after subsection (a)(1)*
13 *(D) the following new sentences: "The limitations un-*
14 *der subparagraphs (B) and (C) shall not apply with*
15 *respect to the amount of a contribution made to or under*
16 *a pension plan to the extent such contribution does not*
17 *exceed the amount of employer contributions necessary*
18 *to satisfy the minimum funding standard provided by*
19 *section 4971(a) for the taxable year. For purposes of de-*
20 *termining the amount deductible under section 162 or*
21 *212 with respect to a contribution to a pension plan and*
22 *for purposes of determining the limitations under sub-*
23 *paragraphs (B) and (C), assets held under the plan*
24 *shall be valued (in accordance with regulations pre-*

1 *scribed by the Secretary or his delegate) on the basis of*
2 *average values for 5 or fewer years."; and*
3 *(2) by striking out subsection (a)(7), and insert-*
4 *ing in lieu thereof:*
5 *"(7) LIMIT OF DEDUCTIONS.—If amounts are de-*
6 *ductible under paragraphs (1) and (3), or (2) and*
7 *(3), or (1), (2), and (3), in connection with two or*
8 *more trusts, or one or more trusts and an annuity plan,*
9 *the total amount deductible in a taxable year under such*
10 *trusts and plans shall not exceed the greater of 25 per-*
11 *cent of the compensation otherwise paid or accrued*
12 *during the taxable year to the persons who are the*
13 *beneficiaries of the trusts or plans, or the amount of*
14 *contributions made to or under the trusts or plans to*
15 *the extent such contributions do not exceed the amount*
16 *of employer contributions necessary to satisfy the min-*
17 *imum funding standard provided by section 4971 for*
18 *the plan year which ends with or within such taxable*
19 *year. In addition, any amount paid into such trust or*
20 *under such annuity plans in any taxable year in excess*
21 *of the amount allowable with respect to such year under*
22 *the preceding provisions of this paragraph shall be de-*
23 *ductible in the succeeding taxable years in order of time,*
24 *but the amount so deductible under this sentence in any*
25 *one such succeeding taxable year together with the*

1 *amount allowable under the first sentence of this para-*
2 *graph shall not exceed the greater of 30 percent of the*
3 *compensation otherwise paid or accrued during such*
4 *taxable year to the beneficiaries to or under the trusts*
5 *or plans to the extent such contributions do not exceed*
6 *the minimum funding standard provided by section 4971*
7 *for the plan year which ends with or within such taxable*
8 *year. This paragraph shall not have the effect of reduc-*
9 *ing the amount otherwise deductible under paragraphs*
10 *(1), (2), and (3), if no employee is a beneficiary under*
11 *more than one trust or a trust and an annuity plan.*
12 *"SEC. 4973. TAXES ON FAILURE TO MEET MINIMUM VEST-*
13 *ING STANDARD.*
14 *"(a) INITIAL TAX.—For each taxable year of an em-*
15 *ployer who maintains a plan to which section 411 applies*
16 *there is hereby imposed a tax of 5 percent on the amount*
17 *of the accumulated vesting deficiency under the plan, de-*
18 *termined as of the end of the plan year ending with or within*
19 *such taxable year. The tax imposed by this subsection shall*
20 *be paid by the employer who maintains the plan.*
21 *"(b) ADDITIONAL TAX.—In any case in which a tax is*
22 *imposed by subsection (a) on an accumulated vesting de-*
23 *ficiency and such accumulated vesting deficiency is not*
24 *corrected within the correction period, there is hereby im-*
25 *posed a tax equal to 100 percent of such accumulated vest-*

1 *ing deficiency. The tax imposed by this subsection shall be*
2 *paid by the employer described in subsection (a).*
3 *"(c) DEFINITIONS.—For purposes of this section—*
4 *"(1) ACCUMULATED VESTING DEFICIENCY.—The*
5 *term 'accumulated vesting deficiency' means an amount*
6 *equal to the actuarially equivalent value of all benefits*
7 *under a plan derived from employer contributions which*
8 *are required by section 411(a)(2)(A) to be nonfor-*
9 *feitable as of the end of a plan year, reduced by an*
10 *amount equal to the actuarially equivalent value of all*
11 *such benefits which are, in fact, nonforfeitable under*
12 *that plan as of the close of that plan year.*
13 *"(2) CORRECT.—The term 'correct' means, with*
14 *respect to an accumulated vesting deficiency, the cred-*
15 *iting under the plan of the amount necessary to reduce*
16 *such accumulated vesting deficiency to zero as of the*
17 *end of a plan year in which such deficiency arose.*
18 *"(3) CORRECTION PERIOD.—The term 'correction*
19 *period' means, with respect to an accumulated vesting*
20 *deficiency, the period beginning with the end of a plan*
21 *year in which there is an accumulated vesting deficiency*
22 *and ending 90 days after the date of mailing of a notice*
23 *of deficiency with respect to the tax imposed by sub-*
24 *section (a) under section 6212, extended by—*

1 "(A) any period in which a deficiency cannot
2 be assessed under section 6213(a), and
3 "(B) any other period which the Secretary or
4 his delegate determines is reasonable and necessary
5 to permit a reduction of the accumulated vesting
6 deficiency to zero under this section.
7 "(d) REGULATIONS.—The Secretary or his delegate
8 may prescribe such regulations as may be necessary to carry
9 out the provisions of this section.
10 "(e) CROSS REFERENCE.—

"For disallowence of deduction for taxes paid under this section, see section 275.".

11 (c) CONFORMING, CLERICAL, ETC., AMENDMENTS.—
12 (1) The table of chapters for subtitle D is amended
13 by adding at the end thereof the following new item:

"CHAPTER 44. Qualified pension plans.".

14 (2) Section 6161 (relating to extensions of time
15 for paying tax) is amended by striking out "or 42"
16 each place it appears in subsection (b) and inserting
17 in lieu thereof ", 42 or 44".
18 (3) Section 6201(d) (relating to assessment au-
19 thority) is amended by striking out "chapter 42" and
20 inserting in lieu thereof "chapter 42 or 44".
21 (4) Section 6211 (relating to definition of a de-
22 ficiency) is amended by—

(A) striking out so much of subsection (a) as precedes "(1) the sum of" and inserting in lieu thereof the following:

"(a) In General.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 42 and 44 the term 'deficiency' means the amount by which the tax imposed by subtitle A or B, or chapter 42 or 44, exceeds the excess of—"; and

(B) striking out "chapter 42" in subsection (b)(2) and inserting in lieu thereof "chapter 42 or 44".

(5) Section 6212 (relating to notice of deficiency) is amended—

(A) by striking out "or chapter 42" in subsections (a) and (b) and inserting in lieu thereof "chapter 42, or chapter 44",

(B) by striking out "chapter 42, and this chapter" in subsection (b), and inserting in lieu thereof "chapter 42, chapter 44, and this chapter", and

(C) by striking out "chapter 42 tax" in subsection (c) and inserting in lieu thereof "chapter 42 or 44 tax".

(6) Section 6213 (relating to restrictions appli-

cable to deficiencies and petition to Tax Court) is amended—

(A) by striking out "or chapter 42" in subsection (a) and inserting in lieu thereof ", chapter 42 or chapter 44",

(B) by striking out the heading in subsection (e) and inserting in lieu thereof "SUSPENSION OF FILING PERIOD FOR CERTAIN CHAPTER 42 OR 44 TAXES.—"; by striking out "or 4945 (relating to taxes on taxable expenditures)" in subsection (e) and inserting in lieu thereof "4945 (relating to taxes on taxable expenditures), 4972 (relating to taxes on failure to meet maximum funding standard), section 4974 (relating to excise tax on prohibited transactions)"; and by striking out "or 4945(h)(2)" in subsection (e) and inserting in lieu thereof ", 4945(h)(2), 4972(d)(2), or 4974(f)(4)".

(7) Section 6214(c) (relating to determinations by Tax Court) is amended—

(A) by striking out the heading and inserting in lieu thereof "TAXES IMPOSED BY SECTION 507, CHAPTER 42, OR CHAPTER 44.——",

(B) by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 44"; and

(C) by striking out "chapter 42" in subsection (d) and inserting in lieu thereof "chapter 42, chapter 44".

(8) Section 6344(a)(1) (relating to cross references) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(9) Section 6501(e)(3) (relating to limitations on assessment and collection) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(10) Section 6503 (relating to suspension of running of period of limitations) is amended—

(A) by striking out "and chapter 42 taxes)" in subsection (a)(1) and inserting in lieu thereof "chapter 42 or 44 taxes)", and

(B) by striking out "or section 507" in subsection (h) and inserting in lieu thereof ", section 507, or chapter 44", and by striking out "or 4945(h)(2)" in subsection (h) and inserting in lieu thereof "4945(i)(2), 4972(d)(2), or 4974(f)(4)".

(11) Section 6512 (relating to limitations in case of petition to Tax Court) is amended by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 44".

(12) Section 6601(d) (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) is amended by—

(A) striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44", and

(B) striking out in the heading thereof "Chapter 42" and inserting in lieu thereof "Chapter 42 or 44".

(13) Section 6653(c)(1) (relating to income, estate, gift, and chapter 42 taxes) is amended by striking out "chapter 42" each place it appears therein (including the caption) and inserting in lieu thereof "chapter 42 or 44".

(14) Section 6659(b) (relating to applicable rules) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(15) Section 6676(b) (relating to failure to supply identifying numbers) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(16) Section 6677(b) (relating to failure to file information returns with respect to certain foreign trusts) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

1 *(17) Section 6679(b) (relating to failure to file*
2 *returns as to organization or reorganization of foreign*
3 *corporations and as to acquisitions of their stock) is*
4 *amended by striking out "chapter 42" and inserting in*
5 *lieu thereof "chapter 42 or 44".*
6 *(18) Section 6682(b) (relating to false informa-*
7 *tion with respect to withholding allowances based on*
8 *itemized deductions) is amended by striking out "and*
9 *chapter 42" and inserting in lieu thereof "chapter 42,*
10 *and chapter 44".*
11 *(19) Section 6861 (relating to jeopardy assess-*
12 *ments of income, estate, and gift taxes) is amended by*
13 *striking out "AND GIFT TAXES.", and inserting in lieu*
14 *thereof "GIFT, AND CERTAIN EXCISE TAXES."*
15 *(20) Section 6862 (relating to jeopardy assess-*
16 *ment of taxes other than income, estate, and gift taxes)*
17 *is amended—*
18 *(A) by striking out "AND GIFT TAXES.", and*
19 *inserting in lieu thereof "GIFT, AND CERTAIN EX-*
20 *CISE TAXES.",*
21 *(B) by striking out "and gift tax)" and insert-*
22 *ing in lieu thereof "gift tax, chapter 42 tax, and*
23 *chapter 44 tax)".*
24 *(21) Section 7422 (relating to civil actions for*
25 *refund) is amended—*

(A) by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44" in subsection (e), and

(B) by striking out "chapter 42" in the heading of subsection (g) and inserting in lieu thereof "chapter 42 or 44", and

(C) by striking out "or 4945" in subsection (g)(1) and inserting in lieu thereof "4945, 4972, 4973, or 4974", and

(D) by striking out "section 4945(a) (relating to initial taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(a) (relating to initial taxes on taxable expenditures), 4972(a) (relating to initial tax on failure to meet minimum funding standard), 4973 (a) (relating to initial tax on failure to meet minimum vesting standard), 4974(a) (relating to initial tax on prohibited transactions)", and

(E) by striking out "or 4945" in paragraphs (2) and (3) and inserting in lieu thereof "4945, 4972, 4973, 4974, or 4975".

(F) by striking out "or section 4945(b) (relating to additional taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(b) (relating to additional taxes on

taxable expenditures), section 4972(b) (relating to additional tax on failure to meet minimum funding standard), section 4973(b) (relating to additional taxes on failure to meet minimum vesting standard), or section 4974(b) (relating to additional tax on prohibited transactions)", and

(G) by striking out "or 4945" in subsections (g) (2) and (3) and inserting in lieu thereof "4945, 4972, 4973, or 4974".

(22) Section 275(a) (relating to certain taxes) is amended by inserting immediately following paragraph (5) the following new paragraph:

"(6) Taxes imposed by chapter 42 and chapter 44 (except section 4975 thereof)."

(d) Effective Date.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after the date of enactment of this Act.

(2) In the case of a plan in existence on the date of enactment of this Act, the amendments made by this section shall apply to plan years beginning after December 31, 1975; however, if the Secretary of Labor determines that the application of any or all of such amendments to a plan for those plan years would create substantial economic hardship for that plan and certifies

1 *his determination to the Secretary of the Treasury before*
2 *that date, the amendments made by this section with*
3 *respect to which the Secretary of Labor makes such*
4 *determination shall apply only to plan years of that plan*
5 *beginning after December 31 of a year not later than*
6 *1981 determined by the Secretary of Labor and certified*
7 *to the administrator of the plan and to the Secretary of*
8 *the Treasury. For purposes of this paragraph the term*
9 *"substantial economic hardship" includes, but is not*
10 *limited to, a finding by the Secretary that—*
11 *(A) there is a substantial risk that, if such*
12 *amendment or amendments apply to the plan with-*
13 *out any extension, the voluntary continuation of the*
14 *plan will be unlikely;*
15 *(B) the plan will be unable to discharge its*
16 *contractual obligations for the payment of benefits;*
17 *or*
18 *(C) application of the amendments to the plan*
19 *without an extension is likely to cause a substantial*
20 *reduction in the number of plan participants or per-*
21 *sons employed by the employer or employers con-*
22 *tributing to or under the plan.*
23 *Benefits under a plan may not be increased by amend-*
24 *ment if an extension under this paragraph is in effect*
25 *with respect to the plan on the effective date of amend-*

1 *ment. If a plan is amended in violation of the provisions*
2 *of this paragraph, any such extension shall not apply*
3 *to plan years beginning after the plan year in which*
4 *such amendment becomes effective.*

5 *PART D—OPTIONAL FORM OF BENEFIT;*
6 *SPECIAL RULES*

7 *SEC. 261. AMENDMENT OF SECTION 401.*

8 *(a) IN GENERAL.—Section 401(a) (relating to re-*
9 *quirements for qualification) is amended by—*

10 *(1) striking out paragraph (4) and inserting in*
11 *lieu thereof the following:*

12 *"(4) if the contributions or benefits provided under*
13 *the plan do not discriminate in favor of employees who*
14 *are—*

15 *"(A) officers,*

16 *"(B) shareholders, or*

17 *"(C) highly compensated,*

18 *excluding for this purpose employees who are nonresident*
19 *aliens whose compensatioon from the employer (for the*
20 *taxable year of the employer) does not include any*
21 *earned income (within the meaning of section 911(b))*
22 *from sources within the United States (within the mean-*
23 *ing of section 861(a)(3)).", and*

24 *(2) by inserting at the end thereof the following*
25 *new paragraphs:*

1 *"(11) A trust shall not constitute a qualified trust*
2 *under this section if the plan of which such trust is a*
3 *part provides for the payment of benefits in the form*
4 *of an annuity for the life of a participant unless such*
5 *plan provides for the payment of such benefit in the form*
6 *of a joint and survivor annuity (with a survivor annuity*
7 *of not less than one half of the amount of the annuity*
8 *payable to the participant during the joint lives of the*
9 *participant and his spouse), unless the participant elects*
10 *in writing, within 2 years of normal retirement age (or,*
11 *if earlier, within 2 years of the first payment of regular*
12 *retirement benefits), not to have the benefit paid in*
13 *such form and that such election may be made only after*
14 *such participant receives a written explanation of the*
15 *terms and conditions of such joint and survivor annuity*
16 *and the effect of such election.*
17 *"(12) A trust shall not constitute a qualified trust*
18 *under this section unless the plan of which such trust*
19 *is a part provides that benefits provided under the plan*
20 *may not be assigned or alienated unless the beneficiary*
21 *thereof cannot be located or ascertained within such*
22 *reasonable period of time as the Secretary or his delegate*
23 *may prescribe by regulation.".*
24 *(b) PLANS BENEFITING OWNER-EMPLOYEES.—Sec-*
25 *tion 401(d)(3) (relating to additional requirements for*

1 *qualification of trusts and plans benefiting owner-employees)*
2 *is amended by striking out "calendar year." and inserting*
3 *in lieu thereof: "calendar, fiscal, or plan year, or any em-*
4 *ployees who are included in a unit of employees covered by*
5 *an agreement which the Secretary or his delegate finds to be*
6 *a collective-bargaining agreement between employee repre-*
7 *sentatives and one or more employers, if such agreement does*
8 *not provide that such employees are to be included in the*
9 *plan, and if there is evidence that retirement benefits were*
10 *the subject of good faith bargaining between such employee*
11 *representatives and such employer or employers during the*
12 *most recently concluded contract negotiations which were*
13 *the subject of bargaining between such representatives and*
14 *the employer or employers.".*

15 *(c) Conforming Amendments.—*

16 *(1) Section 404(a)(2) (relating to deduction for*
17 *contributions of an employer to employees' annuity plan)*
18 *is amended by striking out "and (8)," and inserting in*
19 *lieu thereof "(8), (11), (12), (13), (14), and (15),".*

20 *(2) Section 805 (d)(1)(C) (relating to definition*
21 *of pension plan reserves) is amended by striking out*
22 *"and (8)" and inserting in lieu thereof "(8), (11),*
23 *(12), (13), (14), and (15)".*

1 *(d) EFFECTIVE DATES.—*

2 *(1) GENERAL RULE.—Except as provided by para-*
3 *graph (2), the amendments made by this section shall*
4 *apply with respect to plan years and taxable years begin-*
5 *ning after the date of enactment of this Act.*

6 *(2) EXCEPTION.—In the case of a trust which is*
7 *part of a plan which was in existence on December 31,*
8 *1972, the amendments made by this section shall not*
9 *apply with respect to plan years beginning before Janu-*
10 *ary 1, 1976.*

11 *SEC. 262. PROHIBITION AGAINST MAINTAINING NON-*
12 *QUALIFIED PLANS.*

13 *(a) IN GENERAL.—Except as otherwise provided in*
14 *this section, no person engaged in a trade or business*
15 *which is in or affects interstate commerce shall establish or*
16 *maintain a retirement plan which does not meet the require-*
17 *ments of section 401 of the Internal Revenue Code of 1954*
18 *(other than a plan described in section 404(a)(5) of such*
19 *Code to which section 404(g) of such Code does not apply).*

20 *(b) ENFORCEMENT.—The Secretary of the Treasury is*
21 *authorized to bring an action in any district court of the*
22 *United States having jurisdiction over a person who estab-*
23 *lishes or maintains a retirement plan in violation of the pro-*
24 *visions of subsection (a) against such person for equitable*
25 *relief to restrain that person from maintaining such a plan.*

1 *(c) Exceptions.—Subsection (a) shall not apply to—*

2 *(1) a plan established or maintained outside the*
3 *United States primarily for the benefit of employees who*
4 *are not citizens of the United States if the fund for such*
5 *plan is maintained outside the United States,*

6 *(2) a plan established and maintained solely for the*
7 *purpose of complying with applicable workmen's com-*
8 *pensation or unemployment compensation or disability*
9 *insurance laws,*

10 *(3) a plan established and maintained by a church*
11 *or by a convention or association of churches which is*
12 *exempt from tax under section 501(a) of the Internal*
13 *Revenue Code of 1954,*

14 *(4) a plan established and maintained by a fraternal*
15 *society, order, or association described in section 501(c)*
16 *(8) or (9) of the Internal Revenue Code of 1954 if*
17 *no part of the contributions to or under such plan are*
18 *made by employers of participants in such plan,*

19 *(5) a plan established or maintained by the Govern-*
20 *ment of the United States or the government of any*
21 *State or political subdivision thereof, or by an agency*
22 *or instrumentality thereof, or*

23 *(6) a plan described in section 404(a)(5) of such*
24 *Code to which section 404(g) of such Code does not*
25 *apply.*

1 *(d) DEFINITIONS.—For purposes of this section, the*
2 *term—*
3 *(1) "retirement plan" means any plan, fund, or*
4 *program other than a profit-sharing plan, which is*
5 *established under a written governing instrument and*
6 *provides a determinable retirement benefit for a partici-*
7 *pant in the plan or his beneficiaries; and*
8 *(2) "profit-sharing plan" means a retirement plan*
9 *established or maintained by an employer to provide for*
10 *the participation by his employees in the current or ac-*
11 *cumulated profits of the employer in accordance with a*
12 *formula for allocating contributions made to the plan*
13 *by participants in the plan and for distributing benefits*
14 *under the plan upon retirement or death of any par-*
15 *ticipant.*
16 *(e) REGULATIONS.—The Secretary of the Treasury*
17 *shall prescribe regulations as may be necessary to carry out*
18 *the provisions of this section.*

19 ***PART E—PROTECTION OF PENSION RIGHTS UNDER***
20 ***GOVERNMENT PLANS AND CONTRACTS***

21 ***SEC. 281. DUTIES OF THE SECRETARY OF THE TREAS-***
22 ***URY.***

23 *The Secretary of the Treasury or his delegate shall*
24 *study the extent to which pension plans established and main-*
25 *tained by the Government of the United States, or by any*

1 *State (including the District of Columbia) or political*
2 *subdivision thereof, are adequately funded. In determining*
3 *whether any such plan is adequately funded, the Secretary*
4 *or his delegate shall consider the minimum funding standards*
5 *applicable to private pension plans under the Internal*
6 *Revenue Code of 1954, the taxing power of the government*
7 *maintaining the plan, and whether it would be advisable*
8 *or appropriate to require such plans to comply with the*
9 *same minimum funding standards applicable to private pen-*
10 *sion plans or with other minimum funding standards. The*
11 *Secretary shall submit to the Committee on Finance of the*
12 *Senate and the Committee on Ways and Means of the*
13 *House of Representatives the results of such study not*
14 *later than December 31, 1976, together with such recom-*
15 *mendations, including recommendations for legislation, as*
16 *he may deem appropriate.*

17 *SEC. 282. DUTIES OF SECRETARY OF LABOR.*

18 *(a) Development of Regulations.—The Secre-*
19 *tary of Labor shall develop, in consultation with appro-*
20 *priate professional societies, business organizations, and*
21 *heads of interested Federal departments and procurement*
22 *agencies, recommendations for modifications of Federal pro-*
23 *curement regulations to insure that professional, scientific,*
24 *and technical personnel and others working in associated*

1 *occupations employed under Federal procurement, con-*
2 *struction, or research contracts or grants shall, to the ex-*
3 *tent feasible, be protected against forfeitures of pension or*
4 *retirement rights or benefits, otherwise provided, as a con-*
5 *sequence of job transfers or loss of employment resulting*
6 *from terminations or modifications of Federal contracts,*
7 *grants, or procurement policies.*

8 *(b) PUBLICATION.—Recommended changes in regu-*
9 *lations governing Federal contracts, grants, or procure-*
10 *ment policies shall be developed by the Secretary, as re-*
11 *quired by subsection (a), within six months after enact-*
12 *ment of this Act, and shall be published in the Federal*
13 *Register within fifteen days thereafter as proposed regu-*
14 *lations subject to comment by interested parties.*

15 *(c) RECOMMENDATIONS.—After publication under*
16 *subsection (b), receipt of comments, and such modifica-*
17 *tion of the published proposals as the Secretary deems ap-*
18 *propriate, the recommended changes in procurement reg-*
19 *ulations developed under this title shall be adopted by each*
20 *Federal department and procurement agency within sixty*
21 *days thereafter unless the head of such department or agency*
22 *determines that such changes would not be in the national*
23 *interest or would not be consistent with the primary objec-*
24 *tives of such department or agency.*

1 *TITLE III—PORTABILITY*

2 *SEC. 301. DEFINITIONS.*

3 *For purposes of this title—*

4 *(1) "fund" means the Pension Benefit Portability*
5 *Fund established under section 303;*

6 *(2) "corporation" means the Pension Benefit*
7 *Guaranty Corporation established under title IV of this*
8 *Act;*

9 *(3) "qualified plan" means—*

10 *(A) a pension, profit-sharing, or stock bonus*
11 *plan described in section 401(a) of the Internal*
12 *Revenue Code of 1954,*

13 *(B) an annuity plan described in section 403*
14 *(a) or (b) of such Code, and*

15 *(C) a bond purchase plan described in section*
16 *405(a) of such Code;*

17 *(4) "qualified insurance carrier" means an insur-*
18 *ance carrier subject to regulation and examination by*
19 *the government of the State in which an annuitant re-*
20 *sides, which is determined by the corporation to be*
21 *suitable as the issuer of annuity contracts authorized to*
22 *be purchased under section 307(b)(3);*

23 *(5) "participant" means an employee who is cov-*
24 *ered under a qualified plan other than an employee*
25 *who, at any time, has been an employee within the*

1 *meaning of section 401(c)(1) of the Internal Revenue*
2 *Code of 1954;*
3 *(6) "administrator" means the person or persons*
4 *described in section 3(15) of the Welfare and Pension*
5 *Plans Disclosure Act; and*
6 *(7) "State" means any of the States of the United*
7 *States or the District of Columbia.*
8 ***SEC. 302. PROGRAM ESTABLISHED.***
9 *The corporation shall establish a voluntary pension bene-*
10 *fit portability program in accordance with the provisions of*
11 *this title.*
12 ***SEC. 303. ESTABLISHMENT OF FUND.***
13 *(a) IN GENERAL.—The corporation shall establish a*
14 *Pension Benefit Portability Fund. Any payments received*
15 *by the corporation under this section or under section 305*
16 *shall be deposited in the fund, and all expenditures made by*
17 *the corporation under, or in connection with, this title shall*
18 *be made out of the fund.*
19 *(b) INVESTMENT OF FUND MONEYS.—The corpora-*
20 *tion is authorized to invest any amounts in the fund during*
21 *any fiscal year which it determines not to be needed for use*
22 *in the program for the payment of liabilities during that*
23 *year, and any amounts in the fund not needed for the pay-*
24 *ment of current operating and administrative expenses, in*
25 *obligations of the United States, and to deposit any such*

1 *amounts in interest-bearing accounts in, or purchase cer-*
2 *tificates of deposit from, any bank the deposits of which*
3 *are insured by the Federal Deposit Insurance Corporation,*
4 *and to deposit any such amounts in interest-bearing accounts*
5 *in any savings and loan association in which the accounts*
6 *are insured by the Federal Savings and Loan Insurance*
7 *Corporation or in any credit union insured under title II of*
8 *the Federal Credit Union Act. In no case shall more than*
9 *10 percent of the amount invested under this subsection be*
10 *invested in or with any particular bank, savings and loan*
11 *association, or credit union.*
12 *(c) Reports on Status of Fund.—The corporation*
13 *shall report to the Congress not later than the first day of the*
14 *fourth month beginning after the end of the fiscal year of the*
15 *corporation on the operations and status of the fund during*
16 *that fiscal year, and on its expected operations and status*
17 *during the fiscal year of the corporation during which such*
18 *report is made and the two succeeding fiscal years. The*
19 *report shall also contain a review of the general policies*
20 *followed by the corporation in managing the fund and may*
21 *contain recommendations, including recommendations for*
22 *additional legislation, with respect to the operations of the*
23 *fund and of the portability program established by this title,*
24 *which the corporation chooses to make.*

1 *SEC. 304. REGISTRATION.*

2 *(a) IN GENERAL.—If an employer who maintains a*
3 *qualified plan wishes to be able to make payments from his*
4 *qualified plan assets on behalf of former employees to the*
5 *corporation for deposit in the fund, or to be able to receive*
6 *payments from the corporation for the purchase of benefits*
7 *under his qualified plan for his employees, he shall register*
8 *the plan with the corporation. The registration shall be in*
9 *such form and contain such information as the corporation*
10 *may require. The corporation may not accept any registra-*
11 *tion application which does not contain the employer's agree-*
12 *ment, the breach of which is subject to such charge as the*
13 *corporation may by law impose, to pay to the corporation,*
14 *within 180 days after the date on which it is requested, the*
15 *amount payable under section 305 with respect to a partici-*
16 *pant in the registered qualified plan who is covered by such*
17 *registration who requests such payment if that participant*
18 *was employed by the employer at any time within a period*
19 *of not less than 12 months preceding the date of the request.*

20 *(b) TERMINATION OF REGISTRATION; REREGISTRA-*
21 *TION.—An employer may terminate the registration of his*
22 *plan under this section and reregister from time to time;*
23 *however, if the corporation determines that a requested ter-*
24 *mination of registration and a subsequent registration by*
25 *an employer were for the purpose of discriminating against*

1 *an employee or group of employees in an unlawful manner*
2 *or in a manner prohibited to qualified plans under section*
3 *401(a) (3) or (4) of the Internal Revenue Code of 1954*
4 *or for the purpose of frustrating the purpose of this title,*
5 *that termination of registration will be treated as not having*
6 *been effective.*

7 *(c) LIMITED REGISTRATION.—An employer may reg-*
8 *ister a qualified plan under this section with respect to less*
9 *than all of his employees who are participants in that qualified*
10 *plan if the group of employees with respect to whom he regis-*
11 *ters the plan is reasonably defined and the employer demon-*
12 *strates to the satisfaction of the corporation that the group*
13 *has a particular need for access to the voluntary pension*
14 *benefit portability program which is not shared by his other*
15 *employees who are excluded from the registration but who*
16 *are participants in the same qualified plan.*

17 *SEC. 305. ACCEPTANCE OF DEPOSITS.*

18 *(a) PAYMENTS BY ADMINISTRATORS.—The corpora-*
19 *tion shall accept for deposit into the fund any payment*
20 *made from the assets of a registered qualified plan by the*
21 *administrator of that plan at the request of a participant*
22 *if the payment represents a full discharge of liability by that*
23 *plan to the participant and is made upon his separation from*
24 *the service of the employer or employers who maintain the*
25 *plan.*

1 *(b) Payments by Participants.—The corporation*
2 *shall accept for deposit into the fund any payment made*
3 *by a participant (or former participant) in a qualified plan*
4 *if—*
5 *(1) the payment is all or not less than the taxable*
6 *portion of a distribution made to the participant by the*
7 *plan representing a full discharge of liability of the plan*
8 *to the participant, or a partial discharge of liability*
9 *which will become a full discharge after being adjusted*
10 *to reflect the participant's interest in the plan at the close*
11 *of the plan year, or an installment portion of such a full*
12 *discharge of liability with any remainder to be paid with-*
13 *in 12 months after the date on which the first portion of*
14 *such distribution is made; and*
15 *(2) the payment is made to the corporation for de-*
16 *posit into the fund within 60 days after the date on which*
17 *the participant (or former participant) received the dis-*
18 *tribution to which the payment relates.*
19 *For purposes of this subsection, the term "taxable portion"*
20 *means that part of any distribution to which this subsection*
21 *applies which is attributable to amounts other than employee*
22 *contributions made by the participant.*
23 *(c) Other Conditions.—The corporation shall not*
24 *accept any payment described in subsection (a) unless the*
25 *payment is made directly to the corporation by the adminis-*

1 *trator of the plan, nor shall it accept any payment described*
2 *in subsection (a) or (b) unless it is made in cash or its*
3 *equivalent and it is accompanied by such information with*
4 *respect to the plan and with respect to the payment and the*
5 *participant on behalf of whom the payment is made, or who*
6 *is making the payment, as the corporation may require for*
7 *the efficient administration of the voluntary pension benefit*
8 *portability program.*
9 *SEC. 306. INDIVIDUAL ACCOUNTS.*
10 *(a) ACCOUNT ESTABLISHED.—The corporation shall*
11 *establish and maintain a separate account for each separate*
12 *payment received by the corporation under section 305 of*
13 *this title on behalf of each participant.*
14 *(b) ITEMS SHOWN IN ACCOUNT.—An account estab-*
15 *lished under subsection (a) shall identify the participant for*
16 *whom it is established and shall show—*
17 *(1) the name and address of each qualified plan*
18 *which makes a payment under section 305 of this title*
19 *on behalf of the participant in whose name such account*
20 *is established;*
21 *(2) the portion of each such payment which con-*
22 *stitutes the amount treated under sections 72, 402(a),*
23 *and 403 of the Internal Revenue Code of 1954 as the*
24 *net amount contributed by the participant;*

(3) any remaining portion of each such payment; and

(4) the amount which constitutes the income attributable to such account while in the custody of the fund.

SEC. 307. PAYMENTS FROM INDIVIDUAL ACCOUNTS.

(a) GENERAL RULE.—Except as provided in subsection (b), an amount credited to the account of any participant under this title may be paid by the corporation to—

(1) such participant,

(2) his beneficiary,

(3) a qualified insurance carrier selected by such participant, or

(4) a qualified plan.

(b) LIMITATIONS.—

(1) In the case of a payment by the corporation to a participant, such payment shall be made upon the written request of such participant and in an amount—

(A) of $100 or more, or

(B) which constitutes the total amount credited to the account of such participant.

The corporation shall, upon the date a participant attains the age of 70½ years, pay to such participant the amount which constitutes the total amount credited to the account of such participant. No payment may be made to a participant who has not attained the

age of 59½ years unless that participant is disabled (within the meaning of section 72(m)(7) of the Internal Revenue Code of 1954).

(2) A payment shall be made by the corporation to the beneficiary of a participant only if—

(A) the participant dies before the total amount credited to his account has been paid or distributed in accordance with paragraphs (1), (3), and (4), and

(B) the payment is made to the beneficiary upon his written request and—

(i) is in an amount of $100 or more,

(ii) constitutes the total amount credited to the account of the participant (if less than $100), or

(iii) is used to purchase an immediate annuity for such beneficiary which is payable for his life or for a term certain not extending beyond the life expectancy of the beneficiary) and which is distributed immediately to the beneficiary.

For purposes of this paragraph, the total amount credited to the account of a participant must be paid or distributed to his beneficiary not later than 10 years after the death of the participant.

1 *(3) In the case of a payment by the corporation to*
2 *a qualified insurance carrier selected by a participant*
3 *who has attained the age of 59½ years, such payment*
4 *shall only be made if such payment is used for the pur-*
5 *chase of—*
6 *(A) a single premium life annuity contract*
7 *payable during the life of such participant com-*
8 *mencing not earlier than the date on which such*
9 *participant attains the age of 59½ years and not*
10 *later than the date on which he attains the age of*
11 *70½ years, or*
12 *(B) a single premium joint and survivor an-*
13 *nuity contract payable during the lifetimes of such*
14 *participant and his spouse commencing not earlier*
15 *than the date on which such participant attains (or*
16 *would have attained) the age of 59½ years and*
17 *not later than the date on which such participant*
18 *attains (or would have attained) the age of 70½*
19 *years,*
20 *which will be distributed to such participant on the date*
21 *on which payments are to commence.*
22 *(4) The corporation shall make a payment to a*
23 *qualified plan only if—*
24 *(A) the plan is registered under section 304,*
25 *(B) the payment is made pursuant to a request*

1 *made by the participant within 12 months after he*
2 *becomes a participant in such plan, or, if later,*
3 *within 12 months after the plan is registered under*
4 *section 304, and*
5 *(C) the administrator of the plan agrees to*
6 *accept the payment and to apply it to the purchase*
7 *of benefits under the plan which have a value equiv-*
8 *alent to the value of the payment if it were left in*
9 *the fund.*
10 *(c) MANDATORY WITHDRAWALS.—The balance of*
11 *any account of a participant shall be paid by the corporation*
12 *to such participant within 30 days after notification to the*
13 *corporation by the Secretary of the Treasury or his delegate*
14 *that the trust or plan (which made a payment credited to*
15 *such account) has been determined not to be a qualified trust*
16 *under section 401(a) of the Internal Revenue Code of 1954*
17 *or not to be a plan which satisfied the requirements of section*
18 *404(a)(2) of such Code at the time such trust or plan made*
19 *such payment.*
20 *SEC. 308. ASSISTANCE TO PLAN ADMINISTRATORS.*
21 *The corporation shall provide assistance to employers,*
22 *employee organizations, trustees, and administrators of pen-*
23 *sion plans in their efforts to provide greater retirement pro-*
24 *tection for individuals who are separated from employment*
25 *covered under such plans. Such assistance may include, but*

is not limited to (1) the development of reciprocity arrangements between plans in the same industry or area, and (2) the development of special arrangements for portability of credits within a particular industry or area.

SEC. 309. AMENDMENT OF INTERNAL REVENUE CODE OF 1954.

(a) AMENDMENT OF SECTION 402.—Section 402 (relating to taxability of beneficiary of employees' trust) is amended by—

(1) striking out "and (4)" in the first sentence of paragraph (1) of subsection (a) and inserting in lieu thereof ", (4) and (6)",

(2) inserting after paragraph (5) of subsection (a) (as amended by section 703(b) of this Act) the following new paragraph:

"(6) CERTAIN TRANSFERS.—For purposes of this section, a transfer of the full amount representing an employee's interest in an employee's trust described in section 401(a) which is exempt from tax under section 501(a) shall not be considered a distribution under paragraph (1) if the transfer is made in connection with a change of employment by the employee and the transfer is made from a trust under his former employer not later than the 60th day after its receipt by the employee, and within 12 months after such change of employment, to—

1 *"(A) a trust of his new employer which is de-*
2 *scribed in section 401(a) and exempt from tax under*
3 *section 501(a), or*
4 *"(B) an annuity plan of his new employer*
5 *which meets the requirements of section 404(a)(2).*
6 *This paragraph shall not apply to a transfer made in*
7 *connection with a change of employment by an individual*
8 *who was, at any time, under the former employer's plan*
9 *an employee within the meaning of section 401(c)(1).*
10 *This paragraph shall also apply in the case of a transfer*
11 *to such a trust or annuity plan of not less than that por-*
12 *tion of an employee's interest in his former employer's*
13 *plan which does not represent the employee's own con-*
14 *tributions if the full amount of his interest in such plan*
15 *was distributed to him. For purposes of this title, the con-*
16 *tribution made to the new employer's plan by such a*
17 *transfer shall be treated as an employer contribution*
18 *made on the date contributed, except that for purposes of*
19 *sections 219(b)(2), 404, 411, 414(a), and 1379(b)*
20 *it shall be treated as an employee contribution made on*
21 *such date.", and*
22 *(3) adding at the end thereof the following new*
23 *subsections:*
24 *"(f) TAXABILITY OF PAYMENTS TO THE PENSION*
25 *BENEFIT PORTABILITY FUND.—A payment to the Pension*

1 *Benefit Portability Fund (established under section 303*
2 *of the Retirement Income Security for Employees Act)*
3 *by a qualified plan of an amount described in section 305 of*
4 *that Act on behalf of a participant shall not be includible*
5 *in the gross income of such participant for the taxable year*
6 *of such participant in which such payment is made.*
7 *"(g) TAXABILITY OF PAYMENTS FROM THE PENSION*
8 *BENEFIT PORTABILITY FUND.—Any amount paid on behalf*
9 *of a participant from the Pension Benefit Portability Fund—*
10 *"(1) to a member plan, shall not be includible in*
11 *the gross income of such participant for the taxable year*
12 *of such participant in which such payment is made;*
13 *"(2) to or with respect to such participant, shall*
14 *be includible in gross income to the extent that such*
15 *amount (when added to amounts previously received)*
16 *exceeds the aggregate amount of each payment to the*
17 *Pension Benefit Portability Fund credited to the account*
18 *of such participant which is treated as contributed by*
19 *such participant under subsection (a), or section 72 or*
20 *403;*
21 *"(3) to a qualified insurance carrier (within the*
22 *meaning of section 301(4) of the Retirement Income*
23 *Security for Employees Act) for the purchase of an*
24 *annuity contract described in section 307(b) (2) or (3)*
25 *of that Act shall not be includible in the gross income of*

1 *such participant for the taxable year in which such*
2 *annuity contract is purchased.*
3 *"(h) TAXABILITY OF MANDATORY WITHDRAWALS*
4 *FROM THE PENSION BENEFIT PORTABILITY FUND.—Any*
5 *amount paid to a participant under the provisions of section*
6 *307(c) of the Retirement Income Security for Employees*
7 *Act shall be includible in the gross income of such participant*
8 *to the extent such amount constitutes the amount described in*
9 *section 306(b)(4) of such Act."*
10 *(b) AMENDMENT OF SECTION 403.—Section 403(a)*
11 *(relating to taxability of beneficiary under annuity plan) is*
12 *amended by—*
13 *(1) striking out "paragraph (2)" in the first sen-*
14 *tence of paragraph (1) and inserting in lieu thereof*
15 *"paragraphs (2) and (4)", and*
16 *(2) inserting after paragraph (3) (as added by*
17 *section 703(b) of this Act) the following new para-*
18 *graph:*
19 *"(4) CERTAIN TRANSFERS.—For purposes of this*
20 *section, a transfer of the full amount representing an em-*
21 *ployee's interest in an annuity plan described in section*
22 *404(a)(2) shall not be considered a distribution under*
23 *paragraph (1) if the transfer is made in connection with*
24 *a change of employment by the employee and the trans-*
25 *fer is made from a trust under his former employer not*

later than the 60th day after its receipt by the employee, and within 12 months after such change of employment, to—

"(A) a trust of his new employer which is described in section 401(a) and exempt from tax under section 501(a), or

"(B) an annuity plan of his new employer which meets the requirements of section 404(a)(2).

This paragraph shall not apply to a transfer made in connection with a change of employment by an individual who was, at any time, under the former employer's plan an employee within the meaning of section 401(c)(1). This paragraph shall also apply in the case of a transfer to such a trust or annuity plan of not less than that portion of an employee's interest in his former employer's plan which does not represent the employee's own contributions if the full amount of his interest in such plan was distributed to him. For purposes of this title, the contribution made to the new employer's plan by such a transfer shall be treated as an employer contribution made on the date contributed, except that for purposes of sections 219(b)(2), 404, 411, 414(a), and 1379(b) it shall be treated as an employee contribution made on such date."

1 *(c) EFFECTIVE DATE.—The amendments made by this*
2 *section shall be effective on and after the date of enactment*
3 *of this Act.*

4 *SEC. 310. AUTHORIZATION OF APPROPRIATIONS.*

5 *There are authorized to be appropriated to the corpora-*
6 *tion (which shall be treated solely for purposes of this sec-*
7 *tion as an instrumentality of the United States) such sums*
8 *as may be necessary to carry out the provisions of this title.*

9 TITLE IV—PLAN TERMINATION 10 INSURANCE

11 PART A—PENSION BENEFIT GUARANTY 12 CORPORATION

13 *SEC. 401. DEFINITIONS: SPECIAL RULES.*

14 *(a) DEFINITIONS.—For purposes of this title, the*
15 *term—*

16 *(1) "administrator" means the person or persons*
17 *described in section 501(g)(11) of this Act;*

18 *(2) "substantial employer" means any employer*
19 *(treating employers which are members of the same*
20 *affiliated group, within the meaning of section 1504(a)*
21 *of the Internal Revenue Code of 1954, as one em-*
22 *ployer) who—*

23 *(A) has made contributions to or under a*
24 *multiemployer plan for each of any 2 consecutive*
25 *plan years equaling or exceeding 10 percent of all*

1 *employer contributions paid to or under that plan*
2 *for each such year, and*
3 *(B) who has received notice from the plan*
4 *administrator under section 466 and has not with-*
5 *drawn from the plan within 24 months after re-*
6 *ceiving such notice;*
7 *(3) "multiemployer plan" means a plan which the*
8 *corporation determines is a plan to which more than*
9 *one employer (treating employers who are members of*
10 *the same affiliated group within the meaning of section*
11 *1504(a) of the Internal Revenue Code of 1954 as one*
12 *employer) is required to contribute and which is a plan*
13 *established or maintained pursuant to a collective bar-*
14 *gaining agreement between employee representatives*
15 *and one or more employers, but a plan shall not be con-*
16 *sidered to be a multiemployer plan within the meaning*
17 *of this section unless the corporation determines that—*
18 *(A) under the plan benefits are payable with*
19 *respect to each participant without regard to the*
20 *cessation of contributions by the employer who em-*
21 *ployed that participant, and*
22 *(B) the amount of contributions made to or*
23 *under the plan for a plan year by any employer*
24 *making such contributions is less than 50 percent*
25 *of the aggregate amount of contributions made to*

or under the plan for that plan year by all employers making such contributions;

(4) "corporation" means the Pension Benefit Guaranty Corporation established under section 402; and

(5) "fund" means the Pension Benefit Guaranty Fund established under section 403.

(b) SPECIAL RULES.—

(1) NON-MULTIEMPLOYER PLANS.—A plan which is not a multiemployer plan shall be treated as the separate plan of each employer (with predecessor and successor employers treated as one employer) who contributed to or under the plan.

(2) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer, and a partnership shall be treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954.

SEC. 402. PENSION BENEFIT GUARANTY CORPORATION.

(a) ESTABLISHMENT.—There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation (hereinafter referred to as the "Corporation"). In carrying out its functions under this Act the Corporation shall be administered by a Board of

1 *Directors (as provided in subsection (c)), under the general*
2 *supervision and direction of the Secretary of Labor.*
3 *(b) General Powers.—In addition to any specific*
4 *power granted to the Corporation elsewhere in this Act, the*
5 *Corporation shall have the power—*
6 *(1) to sue and be sued, complain and defend, in its*
7 *corporate name and through its own counsel, in any*
8 *court, State or Federal;*
9 *(2) to adopt, alter, and use a corporate seal, which*
10 *shall be judicially noticed;*
11 *(3) to adopt, amend, and repeal, by its Board of*
12 *Directors, bylaws and rules relating to the conduct of its*
13 *business and the exercise of all other rights and powers*
14 *granted to it by this Act;*
15 *(4) to conduct its business (including the carrying*
16 *on of operations and the maintenance of offices) and to*
17 *exercise all other rights and powers granted to it by this*
18 *Act in any State or other jurisdiction without regard to*
19 *qualification, licensing, or other statute in such State or*
20 *other jurisdiction;*
21 *(5) to lease, purchase, accept gifts or donations of,*
22 *or otherwise to acquire, to own, hold, improve, use, or*
23 *otherwise deal in or with, and to sell, convey, mortgage,*
24 *pledge, lease, exchange, or otherwise dispose of, any*

1 *property, real, personal, or mixed, or any interest there-*
2 *in wherever situated;*
3 *(6) subject to the provisions of subsection (c), to*
4 *elect or appoint such officers, attorneys, employees, and*
5 *agents as may be required, to determine their qualifica-*
6 *tions, to define their duties, to fix their salaries, and, to*
7 *the extent desired, require bonds for them and fix the*
8 *penalty thereof;*
9 *(7) to enter into contracts, to execute instruments,*
10 *to incur liabilities, and to do any and all other acts and*
11 *things as may be necessary or incidental to the conduct*
12 *of its business and the exercise of all other rights and*
13 *powers granted to the Corporation by this Act.*
14 *(c) BOARD OF DIRECTORS.—The Board of Directors*
15 *of the Corporation shall be composed of the Secretary of the*
16 *Treasury, the Secretary of Labor, and the Secretary of*
17 *Commerce. Members of the Board shall serve without com-*
18 *pensation, but shall be reimbursed for travel, subsistence,*
19 *and other necessary expenses incurred in the performance of*
20 *their duties of members of the Board. The Secretary of Labor*
21 *shall be the Chairman of the Board of Directors.*
22 *(d) MEETINGS OF BOARD.—The Board of Directors shall*
23 *meet at the call of its Chairman, or as otherwise provided by*
24 *the bylaws of the Corporation.*

1 *(e) BYLAWS.—As soon as practicable but not later than*
2 *180 days after the date of enactment of this Act, the board*
3 *of directors shall adopt initial bylaws and rules relating to*
4 *the conduct of the business of the corporation. Thereafter,*
5 *the board of directors may alter, supplement, or repeal any*
6 *existing bylaw or rule, and may adopt additional bylaws and*
7 *rules, from time to time as may be necessary. The Secretary*
8 *of Labor shall cause a copy of the bylaws of the corporation*
9 *to be published in the Federal Register not less than annually.*
10 *(f) EXEMPTION FROM TAX.—The Pension Benefit*
11 *Guaranty Corporation, its property, its franchise, capital, re-*
12 *serves, surplus, and its income (including, but not limited*
13 *to, any income of the Pension Benefit Guaranty Fund and*
14 *the Pension Benefit Portability Fund), shall be exempt from*
15 *all taxation now or hereafter imposed by the United States*
16 *(other than taxes imposed under chapter 21 of the Internal*
17 *Revenue Code of 1954, relating to Federal Insurance Con-*
18 *tributions Act, and chapter 23 of such Code, relating to*
19 *Federal Unemployment Tax Act) or by any State or local*
20 *taxing authority, except that any real property and any*
21 *tangible personal property (other than cash and securities)*
22 *of the corporation shall be subject to State and local tax-*
23 *ation to the same extent according to its value as other real*
24 *and tangible personal property is taxed.*

1 *SEC. 403. ESTABLISHMENT OF PENSION BENEFIT GUAR-*
2 *ANTY FUND.*
3 *(a) TRUST FUND.—*
4 *(1) IN GENERAL.—There is established on the books*
5 *of the Treasury of the United States a trust fund to be*
6 *known as the "Pension Benefit Guaranty Fund" (here-*
7 *inafter in this title referred to as the "fund"). The fund*
8 *shall remain available without fiscal year limitation and*
9 *shall consist of such amounts as may be appropriated to*
10 *it and deposited in it as provided in subsection (b).*
11 *Upon request made by the Corporation, the Secretary of*
12 *the Treasury shall transfer such amounts from the fund*
13 *to the Corporation as the Corporation deems necessary*
14 *to pay benefits guaranteed under section 422 and to pay*
15 *the operational and administrative expenses of the*
16 *Corporation.*
17 *(2) TRUSTEE.—The Secretary of the Treasury is*
18 *the trustee of the fund and shall report to the Congress*
19 *not later than the first day of March of each year on*
20 *the operation and status of the fund during the preced-*
21 *ing fiscal year of the corporation.*
22 *(b) AUTHORIZATION OF APPROPRIATIONS.—There is*
23 *authorized to be appropriated to the fund for each fiscal*
24 *year an amount equal to the amount of the collections of tax*
25 *under section 4972 of the Internal Revenue Code of 1954*

1 *(relating to taxes on failure to meet minimum funding stand-*
2 *ard) and chapter 45 of such Code.*
3 *(c) PREMIUM RATES; COVERAGE SCHEDULES.—*
4 *(1) IN GENERAL.—The corporation shall prescribe*
5 *such insurance premium rates and such coverage sched-*
6 *ules for the application of those rates as may be necessary*
7 *to provide sufficient revenue to the fund for the corpora-*
8 *tion to carry out its functions under this title.*
9 *(2) COVERAGE SCHEDULES.—The corporation shall*
10 *maintain separate coverage schedules for—*
11 *(A) plans which are multiemployer plans,*
12 *(B) plans which are not multiemployer plans,*
13 *and*
14 *(C) employers who wish to be insured against*
15 *liability under part D of this title.*
16 *Except as provided in paragraph (3), the corporation*
17 *may revise such schedules whenever it determines that*
18 *revised rates are necessary, but a revised schedule de-*
19 *scribed in subparagraph (A) or (B) shall apply only*
20 *to taxable years beginning more than 30 days after the*
21 *date on which the Congress approves such revised sched-*
22 *ule by a concurrent resolution originating in the House*
23 *of Representatives.*
24 *(3) INITIAL COVERAGE SCHEDULES FOR PLANS.—*
25 *The rate of all plans with respect to plan years ending*

with or within taxable years ending before January 1, 1977, shall be—

(A) in the case of each employer who maintains one or more plans other than a multiemployer plan, with respect to each such plan, an amount equal to $1 for each individual employed by him at any time during each plan year who is a participant in such plan at any time during such plan year; or

(B) in the case of a multiemployer plan, an amount equal to $1 for each individual who is employed by any of the employers in such plan at any time during each plan year and who is a participant in such plan at any one time during such plan year.

(d) Revised Coverage Schedule Procedure.—

(1) In general.—In order to place a revised coverage schedule (other than a schedule described in subsection (c)(2)(C) of this section) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means of the House of Representatives.

(2) Exercise of rulemaking power of the Senate and the House of Representatives.—The

succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3); and they shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(3) RESOLUTION.—For the purpose of the succeeding paragraphs of this subsection, "resolution" means only a concurrent resolution originating in the House of Representatives, the matter after the resolving clause of which is as follows: "That the Congress favors the proposed revised coverage schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ———.", the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

1 *(4) Referral of resolution.—A resolution*
2 *shall be referred to the Committee on Ways and Means*
3 *and the Committee on Education and Labor of the House*
4 *of Representatives or the Committee on Finance and the*
5 *Committee on Labor and Public Welfare of the Senate.*
6 *(5) Discharge of committee.—If the commit-*
7 *tee to which has been referred a resolution has not re-*
8 *ported it before the expiration of 10 calendar days after*
9 *its introduction, it shall then (but not before) be in*
10 *order to move to discharge the committee from further*
11 *consideration of that resolution, or to discharge the com-*
12 *mittee from further consideration of any other resolution*
13 *with respect to the proposed adjustment which has been*
14 *referred to the committee. The motion to discharge may*
15 *be made only by a person favoring the resolution, shall*
16 *be highly privileged (except that it may not be made*
17 *after the committee has reported a resolution with respect*
18 *to the same proposed rate), and debate thereon shall be*
19 *limited to not more than 1 hour, to be divided equally*
20 *between those favoring and those opposing the resolution.*
21 *An amendment to the motion is not in order, and it is*
22 *not in order to move to reconsider the vote by which the*
23 *motion is agreed to or disagreed to. If the motion to*
24 *discharge is agreed to or disagreed to, the motion may*
25 *not be renewed, nor may another motion to discharge the*

1 *committee be made with respect to any other resolution*
2 *with respect to the same proposed rate.*
3 *(6) Consideration of resolution.—When the*
4 *committee has reported, or has been discharged from*
5 *further consideration of a resolution, it is at any time*
6 *thereafter in order (even though a previous motion to*
7 *the same effect has been disagreed to) to move to pro-*
8 *ceed to the consideration of the resolution. The motion is*
9 *highly privileged and is not debatable. An amendment*
10 *to the motion is not in order, and it is not in order to*
11 *move to reconsider the vote by which the motion is*
12 *agreed to or disagreed to. Debate on the resolution shall*
13 *be limited to not more than 10 hours, which shall be*
14 *divided equally between those favoring and those oppos-*
15 *ing the resolution. A motion further to limit debate is*
16 *not debatable. An amendment to, or motion to recommit,*
17 *the resolution is not in order, and it is not in order to*
18 *move to reconsider the vote by which the resolution is*
19 *agreed to or disagreed to.*
20 *(7) Debatability of motions.—Motions to post-*
21 *pone, made with respect to the discharge from com-*
22 *mittee, or the consideration of, a resolution and motions*
23 *to proceed to the consideration of other business shall*
24 *be decided without debate. Appeals from the decisions*
25 *of the Chair relating to the application of the rules of*

1 *the Senate or the House of Representatives, as the case*
2 *may be, to the procedure relating to a resolution shall be*
3 *decided without debate.*
4 *(e) Borrowing Authority.—The corporation is au-*
5 *thorized to issue to the Secretary of the Treasury notes or*
6 *other obligations in an aggregate amount of not to exceed*
7 *$100,000,000, in such forms and denominations, bearing*
8 *such maturities, and subject to such terms and conditions as*
9 *may be prescribed by the Secretary of the Treasury. Such*
10 *notes or other obligations shall bear interest at a rate deter-*
11 *mined by the Secretary of the Treasury, taking into consider-*
12 *ation the current average market yield on outstanding mar-*
13 *ketable obligations of the United States of comparable*
14 *maturities during the month preceding the issuance of such*
15 *notes or other obligations of the corporation. The Secretary*
16 *of the Treasury is authorized and directed to purchase any*
17 *notes or other obligations issued by the corporation under this*
18 *subsection, and for that purpose he is authorized to use as a*
19 *public debt transaction the proceeds from the sale of any se-*
20 *curities issued under the Second Liberty Bond Act, as*
21 *amended, and the purposes for which securities may be issued*
22 *under that Act, as amended, are extended to include any*
23 *purchase of such notes and obligations. The Secretary of the*
24 *Treasury may at any time sell any of the notes or other obli-*
25 *gations acquired by him under this subsection. All redemp-*

1 *tions, purchases, and sales by the Secretary of the Treasury*
2 *of such notes or other obligations shall be treated as public*
3 *debt transactions of the United States.*

4 ***PART B—COVERAGE***

5 ***SEC. 421. PLANS COVERED.***

6 *(a) General Rule.—Except as provided by subsec-*
7 *tion (c), this section applies to any plan which, for a plan*
8 *year, is, or has been determined by the Secretary of the*
9 *Treasury to be, a plan described in section 401(a) of the*
10 *Internal Revenue Code of 1954, or which meets the require-*
11 *ments of section 404(a)(2) of such Code. For purposes of*
12 *this section, a successor plan is deemed to be a continuation*
13 *of a predecessor plan. For this purpose, a successor plan is a*
14 *plan which covers a group of employees which includes sub-*
15 *stantially the same employees as a previously established*
16 *plan, and provides substantially the same benefits as that*
17 *plan provided.*

18 *(b) Consent by Plans To Be Covered by Title.—*
19 *The filing of a return under section 6040 of the Internal*
20 *Revenue Code of 1952 for a plan claiming treatment as a*
21 *plan to which part I of subchapter D of chapter 1 of such*
22 *Code applies shall constitute the consent of that plan and its*
23 *administrator to be bound by the provisions of this title.*

24 *(c) Limitations.—This section shall not apply to any*
25 *plan—*

(1) which is a pension plan of the money purchase type, a profit-sharing plan, or a stock bonus plan,

(2) established and maintained by the United States, a State or political subdivision thereof, or a corporation which is an instrumentality of the United States, a State or political subdivision thereof,

(3) established and maintained by a church or a convention or association of churches which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954, unless—

(A) such plan has notified the corporation, in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this title apply to it,

(B) the plan is established and maintained for the exclusive benefit of employees of such church or convention or association of churches who are employed exclusively in connection with one or more unrelated trades or businesses (within the meaning of section 513 of such Code), or

(C) the plan is a multiemployer plan, and one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501(a) of such Code, or

1 *(4) a plan established and maintained by a fra-*
2 *ternal society, order, or association described in section*
3 *501(c) (8) or (9) of such Code under which no part of*
4 *the contributions to or under the plan are made by em-*
5 *ployers of participants in the plan.*
6 *For purposes of paragraph (1) of this subsection, the term*
7 *"money purchase type" does not include a plan under which*
8 *a fixed benefit is promised if the employer or his representa-*
9 *tive participated in the determination of that benefit.*
10 ***SEC. 422. BENEFITS COVERED.***
11 *(a) General Rule.—Subject to the limitations con-*
12 *tained in subsection (b), the corporation shall guarantee the*
13 *payment of all nonforfeitable benefits and of all ancillary*
14 *benefits under the terms of a plan which terminates at a time*
15 *when section 421 applies to it. For purposes of this sub-*
16 *section, the term "ancillary benefit" means any nonforfeit-*
17 *able benefit other than a nonforfeitable retirement benefit*
18 *which is determined by the corporation to be insurable as*
19 *an ancillary benefit.*
20 *(b) Limitations.—*
21 *(1) New benefits.—No benefits provided by a*
22 *plan in effect for less than 36 months at the time the*
23 *plan terminates shall be guaranteed under this section.*
24 *For purposes of this paragraph, the time a successor*
25 *plan (within the meaning of section 421(a)) has been*

1 *in effect includes the time a previously established plan*
2 *(within the meaning of section 421(a)) was in effect.*
3 *(2) BENEFIT INCREASES.—The amount of benefits*
4 *described in subsection (a) shall be determined without*
5 *regard to any amendment of the plan which increases*
6 *the value of benefits payable with respect to a participant,*
7 *if such amendment was made within the 36-month pe-*
8 *riod preceding the date on which the plan terminates.*
9 *(3) MAXIMUM GUARANTEED BENEFIT UNDER*
10 *SINGLE PLAN.—Except as provided in paragraphs (8)*
11 *and (9), the amount of monthly benefits described in*
12 *subsection (a) provided by a plan, which are guaran-*
13 *teed under this section with respect to a participant, shall*
14 *not have an actuarial value which exceeds the actuarial*
15 *value of a monthly benefit with no ancillary benefits in*
16 *the form of a life annuity commencing at age 65 equal to*
17 *the lesser of—*
18 *(A) 50 percent of his average monthly gross*
19 *income from his employer during the 5 calendar*
20 *year period (or, if less, during the number of calen-*
21 *dar years in such period in which he actively par-*
22 *ticipates in the plan) preceding the calendar year in*
23 *which the plan terminates (or the calendar year in*
24 *which he is no longer an active participant) deter-*
25 *mined by dividing 1/12th of the sum of all such*

gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The actuarial value of a benefit (including ancillary benefits) shall be determined in accordance with bylaws of the corporation. For purposes of subparagraph (A), gross income within the meaning of section 911(b) of the Internal Revenue Code of 1954 from the employer; and the 5 calendar year period taken into account shall be the 5 consecutive calendar years period which yields the largest average annual gross income from an employer.

(4) MAXIMUM AMOUNT PAYABLE UNDER MORE THAN ONE PLAN.—Notwithstanding paragraph (3), no person shall receive from the corporation with respect to a participant an amount, or amounts, that has an actuarial value which exceeds a monthly benefit with no ancillary benefits in the form of a life annuity commencing at age 65 equal to the amount determined under paragraph (3)(B) at the time of the last plan termination.

1 *(5) CERTAIN PARTICIPANTS.—*

2 *(A) This paragraph shall apply only to a par-*
3 *ticipant who is covered by a plan as an owner-*
4 *employee (within the meaning of section 401(c)(3)*
5 *of such Code) on any day during the plan year in*
6 *which the plan terminates or any of the 3 consecu-*
7 *tive plan years immediately preceding such year.*

8 *(B) The amount of monthly benefits otherwise*
9 *payable from the corporation with respect to each*
10 *participant described in subparagraph (A) shall be*
11 *reduced to take account of such participant's indi-*
12 *vidual pro rata share of the accumulated funding*
13 *deficiency (as defined in section 4971(a) of the*
14 *Internal Revenue Code of 1954) at the time the plan*
15 *terminates. The individual pro rata share shall be*
16 *equal to such accumulated unfunded deficiency mul-*
17 *tiplied by a fraction, the numerator of which is the*
18 *amount of benefits otherwise payable from the cor-*
19 *poration with respect to such participant and the*
20 *denominator of which is the value of benefits payable*
21 *from the corporation with respect to all such par-*
22 *ticipants on the date of termination.*

23 *(6) DISQUALIFICATION.—*

24 *(A) DISQUALIFICATION BY SECRETARY.—No*
25 *benefits accrued under a plan after the date on*

1 *which the Secretary of the Treasury or his delegate*
2 *issues notice that he has determined that any trust*
3 *which is a part of a plan does not meet the re-*
4 *quirements of section 401(a) of the Internal Rev-*
5 *enue Code of 1954, or that the plan does not meet*
6 *the requirements of section 404(a)(2) of such*
7 *Code, are guaranteed under this section unless such*
8 *determination is erroneous. This subparagraph shall*
9 *not apply if the Secretary or his delegate subse-*
10 *quently issues a notice that such trust meets the re-*
11 *quirements of section 401(a) of such Code or that*
12 *the plan meets the requirements of section 404(a)*
13 *(2) of such Code.*
14 *(B) OTHER DISQUALIFICATIONS.—No bene-*
15 *fits accrued under a plan after the date on which*
16 *an amendment of the plan is adopted which causes*
17 *the Secretary of the Treasury or his delegate to*
18 *determine that any trust under the plan has ceased*
19 *to meet the requirements of section 401(a) of the*
20 *Internal Revenue Code of 1954 or that the plan*
21 *has ceased to meet the requirements of section 404*
22 *(a)(2) of such Code, are guaranteed under this*
23 *section unless such determination is erroneous. This*
24 *subparagraph shall not apply if the amendment is*

1 *revoked as of the date it was first effective or*
2 *amended to comply with such requirements.*
3 *SEC. 423. CONTINGENT LIABILITY COVERAGE.*
4 *(a) IN GENERAL.—The corporation is authorized to*
5 *insure any employer who maintains or contributes to or*
6 *under a plan to which section 421 applies against the pay-*
7 *ment of any liability which would be imposed on him under*
8 *part D of this title in the event of a termination of that plan.*
9 *(b) PREMIUMS.—The corporation is authorized to pre-*
10 *scribe and collect, in such manner as it deems to be appropri-*
11 *ate, premiums for insurance offered under subsection (a).*
12 *Such premiums shall be determined by the corporation and*
13 *revised by it from time to time as may be necessary, without*
14 *regard to the provisions of section 403(d), and shall be*
15 *chargeable at a rate sufficient to fund any payments by the*
16 *corporation which become necessary under any such con-*
17 *tract of insurance.*
18 *(c) CONTINGENT LIABILITY COVERAGE.—No payment*
19 *shall be made by the corporation under any contract of in-*
20 *surance entered into under this section with an employer for*
21 *contingent liability arising with respect to any benefit unless*
22 *the premiums under such contract have been paid by the*
23 *employer and such contract has been in effect (with respect*
24 *to any such benefit) for more than 60 months.*

1 *(d) No Payment if Employer Remains in Busi-*
2 *ness.—No payment shall be made by the corporation under*
3 *any contract of insurance entered into by it under this section*
4 *with respect to the contingent liability of any employer who,*
5 *within the meaning of section 462(f), remains in business*
6 *after the termination of the plan with respect to which the*
7 *contingent liability arose.*

8 *(e) Other Insurance.—Nothing in this section shall*
9 *be considered to preclude the purchase by an employer of*
10 *insurance from any other person, or to limit the circum-*
11 *stances under which that insurance is payable, or in any way*
12 *to limit the terms and conditions of such insurance.*

13 *SEC. 424. OTHER RISKS.*

14 *The corporation is authorized to insure (subject to the*
15 *limitations of section 422(b)(4)) the payment of other*
16 *classes of benefits under a plan wherever feasible, to prescribe*
17 *the terms and conditions of such insurance, and to establish*
18 *and collect such premiums as may be necessary.*

19 *PART C—TERMINATIONS*

20 *SEC. 441. TERMINATION BY PLAN ADMINISTRATOR.*

21 *(a) General Rule.—Before the effective date of the*
22 *termination of a plan, the plan administrator shall file a*
23 *notice with the corporation that the plan is to be terminated*
24 *and for a period of 90 days thereafter the plan administrator*
25 *shall pay no amount pursuant to the termination procedure*

1 *of the plan unless, before the expiration of such period, he*
2 *receives a notice of sufficiency under subsection (b). There-*
3 *after, the plan administrator shall proceed with the termina-*
4 *tion of the plan in a manner consistent with section 444.*

5 *(b) NOTICE OF SUFFICIENCY.—If the corporation de-*
6 *termines that, after application of section 444, the assets*
7 *held under the plan are sufficient to discharge when due*
8 *all obligations of the plan with respect to benefits guaranteed*
9 *under section 422 (without regard to section 422(b)(5)),*
10 *it shall notify the plan administrator of such determination*
11 *as soon as practicable.*

12 *(c) NOTICE OF INSUFFICIENCY.—If, within a period*
13 *of 90 days after a notice of termination is filed by a plan*
14 *administrator pursuant to subsection (a), the corporation*
15 *finds that it is unable to determine that, after application*
16 *of section 444, the assets held under the plan are sufficient*
17 *to discharge when due all obligations of the plan with respect*
18 *to benefits guaranteed under section 422 (without regard to*
19 *section 422(b)(5)), it shall notify the plan administrator*
20 *within such 90-day period of such finding. Upon issuance*
21 *of such notice, the plan shall be treated as if it had been*
22 *terminated by the corporation under section 442 on the date*
23 *such notice is issued.*

24 *(d) EXTENSION OF TIME.—The corporation and the*
25 *plan administrator may agree to extend the 90-day period*

1 *provided by this section by a written agreement signed by the*
2 *corporation and the plan administrator before the expiration*
3 *of the 90-day period. Such agreement shall extend the 90-*
4 *day period in accordance with the agreement. The 90-day*
5 *period may be further extended by subsequent written agree-*
6 *ments signed by the corporation and the plan administrator*
7 *made before the expiration of a previously agreed upon ex-*
8 *tension of the 90-day period. Any extension may be made*
9 *upon such terms and conditions (including the payment of*
10 *benefits) as are agreed upon by the corporation and the plan*
11 *administrator.*

12 *(e) SUBSEQUENT INSUFFICIENCY.—If in terminating*
13 *the plan as authorized by this section, the plan administrator*
14 *finds that the plan is unable, or will be unable, to pay when*
15 *due, benefits guaranteed under section 422 (without regard*
16 *to section 422(b)(5)) the plan administrator shall notify*
17 *the corporation of such finding as soon as practicable there-*
18 *after. If the corporation concurs with the finding of the plan*
19 *administrator, it shall terminate the plan under section 442.*

20 *(f) CERTAIN AMENDMENTS OF PLAN.—For purposes*
21 *of subsection (a), a plan with respect to which benefits are*
22 *guaranteed under section 422 shall be treated as terminated*
23 *upon the adoption of an amendment to such plan, if, after*
24 *giving effect to such amendment, the plan is a plan described*
25 *in section 421(c)(1).*

1 *SEC. 442. TERMINATION BY PENSION BENEFIT GUAR-*
2 *ANTY CORPORATION.*
3 *(a) PRELIMINARY DETERMINATION.—The corpora-*
4 *tion may institute proceedings under this section to terminate*
5 *a plan whenever it determines that—*
6 *(1) the plan has not met the minimum funding*
7 *standard required under section 4971 of the Internal*
8 *Revenue Code of 1954, or has been notified by the*
9 *Secretary of the Treasury that a notice of deficiency*
10 *under section 6212 of such Code has been mailed with*
11 *respect to the tax imposed under section 4972(a) of such*
12 *Code,*
13 *(2) the plan is unable to pay benefits when due to*
14 *the extent guaranteed under section 422 (without regard*
15 *to section 422(b)(5)),*
16 *(3) the reportable event described in section 443*
17 *(b)(8) has occurred, or*
18 *(4) the liability of the corporation may reasonably*
19 *be expected to increase substantially if the plan is not*
20 *terminated.*
21 *(b) NOTICE TO PLAN.—Whenever the corporation*
22 *makes a determination under subsection (a) with respect to*
23 *a plan it may, upon notice to the plan, apply to the appro-*
24 *priate United States district court for the appointment of a*
25 *trustee to administer the plan with respect to which the de-*

1 *termination is made pending the issuance of a decree under*
2 *subsection (c) ordering the termination of the plan. If within*
3 *3 business days after the filing of an application under this*
4 *subsection, or such other period as the court may order, the*
5 *administrator of the plan shall consent to the appointment of*
6 *a trustee, or fail to show why a trustee should not be ap-*
7 *pointed, the court may grant the application and appoint a*
8 *trustee to administer with plan in accordance with its terms*
9 *until the corporation determines that the plan should be ter-*
10 *minated or that termination is unnecessary.*

11 *(c) Application for Decree.—If the corporation*
12 *has issued a notice under this section to a plan administrator*
13 *and (whether or not a trustee has been appointed under*
14 *subsection (b)) has determined that the plan should be*
15 *terminated, it may, upon notice to the plan administrator,*
16 *apply to the appropriate United States district court for a*
17 *decree adjudicating that the plan must be terminated in*
18 *order to protect the interests of the participants and to avoid*
19 *any further deterioration of the financial condition of the*
20 *plan or any further increase in the liability of the fund. Upon*
21 *granting a decree for which the corporation has applied*
22 *under this subsection the court shall authorize the trustee*
23 *appointed under subsection (b) (or appoint a trustee if one*
24 *has not been appointed under such subsection and authorize*

him) to terminate the plan in accordance with the provisions of section 444.

(d) Powers and Duties of the Trustee.—

(1) Powers.—

(A) Powers before issuance of decree.—A trustee appointed under subsection (b) shall, until the issuance of a decree under subsection (c), have the power—

(i) to do any act authorized by the plan or this title to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee.

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan and applicable rules of law;

(iv) to limit payment of benefits under the plan to amounts guaranteed by section 422 (without regard to section 422(b)(5)) or to continue payment of some or all of the benefits which were being paid prior to his appointment; and

(v) to do such other acts as he deems necessary to continue operation of the plan without

increasing the political liability of the corporation, if such acts may be done under the provisions of the plan.

If the court which application is made under subsection (c) dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) within 30 days after the date on which the trustee is appointed, the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct.

(B) Powers upon issuance of decree.—If the court to which an application is made under subsection (c) issues the decree requested in such application, the trustee shall have the power—

(i) to pay benefits under the plan in accordance with the provisions of section 444,

(ii) to collect for the plan any amounts due the plan,

(iii) to receive any payment made by the corporation to the plan under this title,

(iv) to commence, prosecute, or defend on

behalf of the plan any suit or proceeding involving the plan, other than a suit or proceeding in which the corporation is an adverse party,

(v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court,

(vi) to liquidate the plan assets, and

(vii) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries.

(2) NOTICE TO INTERESTED PARTIES.—As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this title to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term "interested party" means—

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant, and

(C) each employer who may be subject to liability under section 462.

(3) DUTIES.—Except to the extent inconsistent with the provisions of this Act, or as may be otherwise

1 *ordered by the court, a trustee appointed under this sec-*
2 *tion shall be subject to the same duties as a trustee*
3 *appointed under section 47 of the Bankruptcy Act.*
4 *(e) Effect of Other Pending Actions.—An ap-*
5 *plication by the corporation under this section may be filed*
6 *notwithstanding the pendency in the same or any other court*
7 *of any bankruptcy, mortgage foreclosure, or equity receiver-*
8 *ship proceeding, or any proceeding to reorganize, conserve,*
9 *or liquidate such plan or its property, or any proceeding to*
10 *enforce a lien against property of the plan.*
11 *(f) Executive Jurisdiction Over Plan.—Upon*
12 *the filing of an application for the appointment of a trustee*
13 *or the issuance of a decree under this section, the court to*
14 *which an application is made shall have exclusive jurisdiction*
15 *of the plan involved and its property wherever located, with*
16 *the powers, to the extent consistent with the purposes of this*
17 *section, of a court of bankruptcy and of a court in a pro-*
18 *ceeding under chapter X of the Bankruptcy Act. Pending*
19 *an adjudication under subsection (c) such court shall stay,*
20 *and upon appointment by it of a trustee as provided in this*
21 *section such court shall continue the stay of, any pending*
22 *bankruptcy, mortgage foreclosure, equity receivership, or*
23 *other proceeding to reorganize, conserve, or liquidate the plan*
24 *or its property and any other suit against any receiver, con-*
25 *servator, or trustee of the plan or its property. Pending such*

1 *adjudication and upon the appointment by it of such trustee,*
2 *the court may stay any proceeding to enforce a lien against*
3 *property of the plan or any other suit against the plan.*
4 *(g) APPROPRIATE COURT.—An action under this sub-*
5 *section may be brought in the judicial district where the plan*
6 *administrator resides or is doing business or where any*
7 *property of the trust forming a part of the plan is situated.*
8 *A district court in which such action is brought may issue*
9 *process with respect to such action in any other judicial*
10 *district.*
11 *SEC. 443. REPORTABLE EVENTS.*
12 *(a) REPORT OF EVENT.—Within 30 days after the*
13 *occurrence of a reportable event, the plan administrator shall*
14 *notify the corporation that such event has occurred.*
15 *(b) OCCURRENCE OF REPORTABLE EVENT.—For pur-*
16 *poses of this section a reportable event occurs—*
17 *(1) LOSS OF QUALIFIED OR EXEMPT STATUS BY*
18 *TRUST.—At the time the Secretary of the Treasury issues*
19 *notice that he has determined that any trust which is a*
20 *part of the plan and which has previously qualified under*
21 *section 401(a) of the Internal Revenue Code of 1954,*
22 *or which the Secretary of the Treasury has previously*
23 *determined has so qualified, has ceased to so qualify, or*
24 *ceased to be exempt from tax under section 501(a) of*
25 *such Code;*

1 *(2) Loss of qualified status by plan.—At*
2 *the time the Secretary of the Treasury issues notice that*
3 *he has determined that a plan which has previously*
4 *satisfied the requirements of section 404(a)(2) of the*
5 *Internal Revenue Code of 1954 or which the Secretary*
6 *of the Treasury has previously determined has satisfied*
7 *such requirements, has ceased to satisfy such require-*
8 *ments;*
9 *(3) Benefit decreased.—At the time an amend-*
10 *ment of the plan is adopted if, under the amendment,*
11 *the benefit payable with respect to any participant may*
12 *be decreased;*
13 *(4) Decrease in participants.—At the time*
14 *the number of active participants is less than 80 percent*
15 *of the number of such participants at the beginning of*
16 *the plan year or less than 75 percent of the number of*
17 *such participants at the beginning of the previous plan*
18 *year;*
19 *(5) Termination under internal revenue*
20 *code.—At the time the Secretary of the Treasury deter-*
21 *mines that there has been a termination or partial ter-*
22 *mination of the plan or a complete discontinuance of con-*
23 *tributions thereunder, within the meaning of section 401*
24 *(a)(7) of the Internal Revenue Code of 1954;*

1 *(6) Failure to meet minimum funding*
2 *standard.—At the time the plan fails to meet the*
3 *minimum funding standard under section 4971 of the*
4 *Internal Revenue Code of 1954;*
5 *(7) Plan unable to pay benefits.—At the time*
6 *a plan is unable to pay benefits thereunder when due; or*
7 *(8) Certain distributions.—At the time there is*
8 *a distribution under a plan to a participant who is an*
9 *owner-employee (within the meaning of section 401(c)*
10 *(3) of the Internal Revenue Code of 1954) if such*
11 *distribution is made other than on account of death or*
12 *disability, exceeds $10,000, and results in the creation*
13 *of, or an increase in, unfunded vested liabilities under*
14 *the plan.*
15 *(c) Notification by Secretary of the Treas-*
16 *ury.—The Secretary of the Treasury shall notify the cor-*
17 *poration whenever he makes a determination described in*
18 *paragraph (1) or (5) of subsection (b), issues the notice*
19 *described in paragraph (2) of such subsection, mails a*
20 *notice of deficiency under section 6212 of the Internal Reve-*
21 *nue Code of 1954 to a plan with respect to the tax imposed*
22 *under section 4972(a) of such Code, or obtains any other*
23 *information with respect to a plan which constitutes a re-*
24 *portable event.*

1 *SEC. 444. ALLOCATION OF ASSETS.*

2 *As soon as practicable after the termination of a plan*
3 *to which section 421 applies, the plan administrator shall al-*
4 *locate the assets of the plan as follows:*

5 *(1) CERTAIN EMPLOYEE CONTRIBUTIONS.—In the*
6 *case of a plan which provides for employee contributions*
7 *other than mandatory contributions, the portion of an*
8 *employee's accrued benefit derived from such employee*
9 *contributions shall be treated as an accrued benefit de-*
10 *rived from contributions under a plan other than a plan*
11 *to which section 421 applies, and, before applying para-*
12 *graph (2), assets shall first be allocated to such other*
13 *plan in accordance with the account balances of the par-*
14 *ticipants in such other plan.*

15 *(2) MANDATORY CONTRIBUTIONS.—Assets shall*
16 *first be allocated to each participant to the extent of his*
17 *total mandatory contributions. In the event that the assets*
18 *are insufficient for this purpose, the assets shall be so*
19 *allocated pro rata.*

20 *(3) BENEFITS IN PAY STATUS FOR AT LEAST 3*
21 *FULL YEARS.—If the assets of the plan exceed the total*
22 *amount allocated under paragraphs (1) and (2), the*
23 *remaining assets shall be allocated to each participant*
24 *who began to receive payment of benefits not less than 3*
25 *years prior to the time the plan terminates to the extent*

not included in paragraphs (1) and (2) and to the extent of the excess of the present value (as of the date on which the plan terminated) of his benefits (at the level in effect 36 months prior to the date of termination) over his total mandatory contributions under the plan. If the assets of the plan are insufficient for this purpose, the assets remaining after the allocation described in paragraphs (1) and (2) shall be so allocated pro rata.

(4) OTHER GUARANTEED BENEFITS.—If the assets of the plan exceed the total amounts allocated under paragraphs (1), (2), and (3), the remaining assets shall be allocated to each participant to the extent of the present value of all other benefits guaranteed under section 422 (without regard to section 422(b)(5)). If the assets of the plan are insufficient for this purpose, the assets remaining after the allocations described in paragraphs (1) and (2) shall be so allocated pro rata with respect to all such other benefits of each participant.

For purposes of this section, "mandatory contributions" are amounts contributed to the plan by the participant which are required as a condition of employment, as a condition of participation in such plan, or in order to obtain benefits under the plan attributable to employer contribu-

1 *tions. For this purpose the total amount of mandatory con-*
2 *tributions of a participant is the amount of such contribu-*
3 *tions reduced (but not below zero) by the sum of the*
4 *amounts paid or distributed to him under the plan prior to*
5 *such termination.*

6 *SEC. 445. RECAPTURE OF CERTAIN PAYMENTS.*

7 *(a) AUTHORITY.—To the extent the Corporation would*
8 *not otherwise have the power under this title to undertake*
9 *the action described in this section with respect to a plan,*
10 *the Corporation shall have such power with respect to any*
11 *plan which affects interstate commerce. For purposes of*
12 *this section, a plan affects commerce if a labor dispute con-*
13 *cerning the plan would hinder or obstruct commerce or the*
14 *free flow of commerce.*

15 *(b) RECAPTURE.—Except as provided in subsection*
16 *(c), the Corporation is authorized to recover from a partici-*
17 *pant the recoverable amount of all payments from the*
18 *plan to him which commenced within the 3-year period*
19 *immediately preceding the time the plan is terminated.*
20 *The recoverable amount is the sum of all payments actually*
21 *received by the participant reduced by (1) the amounts*
22 *such participant would have received during such 3-year*
23 *period if he had elected at the time of the first such pay-*
24 *ment to receive his interest in the plan as a monthly benefit*
25 *equivalent to a monthly benefit with no ancillary benefit in*

1 *the form of a life annuity commencing at age 65 and (2)*
2 *the present value at the time of termination of the bene-*
3 *fits guaranteed under this title to the extent such bene-*
4 *fits exceed his pro rata share of the corporation liability*
5 *(determined under section 461). Such pro rata share shall*
6 *be determined in accordance with bylaws or rules of the*
7 *corporation.*
8 *(c) SPECIAL RULES.—*
9 *(1) CERTAIN DISTRIBUTIONS.—In the event of a*
10 *distribution described in section 443(b)(8) the 3-year*
11 *period referred to in subsection (b) shall not commence*
12 *until the date on which the corporation is notified of the*
13 *distribution.*
14 *(2) NO RECOVERY FOR DEATH OR DISABILITY*
15 *DISTRIBUTIONS.—The corporation shall not recover any*
16 *payment made from a plan after or on account of the*
17 *death of a participant, or on account of his disability*
18 *(if he is receiving disability benefits under the Social*
19 *Security Act with respect to that disability).*
20 *(3) WAIVER.—The corporation is authorized to*
21 *waive, in whole or in part, the recovery of any amount*
22 *which it is authorized to recover under this part in any*
23 *case in which it determines that substantial economic*
24 *hardship would result to the participant or his bene-*
25 *ficiaries from whom such amount is recoverable.*

1 *SEC. 446. REPORT BY CORPORATION.*

2 *The corporation shall furnish to the trustee and file with*
3 *the court a report setting forth—*

4 *(1) the amount of benefits payable with respect to*
5 *each participant under a plan to be terminated,*

6 *(2) the amount of benefits guaranteed under sec-*
7 *tion 422 which are payable with respect to each partic-*
8 *ipant in the plan,*

9 *(3) the present value, as of the time of termination,*
10 *of the aggregate amount of benefits payable under section*
11 *422 (determined without regard to section 422(b)(5)),*

12 *(4) the fair market value of the assets of the plan*
13 *at the time of termination,*

14 *(5) the computations under section 444, and all*
15 *actuarial assumptions under which the items described*
16 *in paragraphs (1) through (4) were computed, and*

17 *(6) such other information with respect to the plan*
18 *as the trustee may require in order to terminate the plan.*

19 *PART D—LIABILITY*

20 *SEC. 461. CORPORATION LIABILITY.*

21 *The liability of the corporation with respect to a plan*
22 *which is terminated under this title shall be equal to the*
23 *present value, as of the time of termination, of the aggregate*
24 *amount of benefits guaranteed under section 422 (determined*
25 *without regard to section 422(b)(5)), to the extent not pro-*

1 *vided for by the fair market value of the assets of the plan,*
2 *at such time, allocated in a manner consistent with the re-*
3 *quirements of section 444. This amount shall be payable from*
4 *the fund described in section 403.*

5 *SEC. 462. LIABILITY OF EMPLOYER.*

6 *(a) EMPLOYERS LIABLE.—This section applies to any*
7 *employer who maintained a plan (other than a multiem-*
8 *ployer plan) at the time it was terminated by the corpora-*
9 *tion, but does not apply—*

10 *(1) to an employer who maintained a plan with*
11 *respect to which he paid the annual optional premium*
12 *described in paragraphs (2)(C) and (3)(B) of section*
13 *403(b) for each of the 5 plan years immediately pre-*
14 *ceding the plan year during which the plan terminated*
15 *unless the employer remains in business (as defined in*
16 *subsection (f)), or*

17 *(2) to the extent of any liability arising out of the*
18 *insolvency of a qualified insurance carrier (as defined*
19 *in section 301(4) of this Act).*

20 *(b) AMOUNT OF LIABILITY.—Any employer to which*
21 *this section applies shall be liable to the Corporation, in an*
22 *amount equal to the lesser of—*

23 *(1) the amount finally determined under section*
24 *461, or*

1 *(2) 30 percent of the net worth of such employer*
2 *determined as of the day 120 days prior to the date of*
3 *termination, without regard to any liability under this*
4 *section.*
5 *(c) NET WORTH.—For purposes of subsection (b)(2)*
6 *the net worth of an employer means—*
7 *(1) in the case of a corporation whose stock is*
8 *traded on a national exchange, the aggregate value of*
9 *such corporation's stock, and*
10 *(2) in the case of any other employer, the fair mar-*
11 *ket value of its assets less its liabilities determined in a*
12 *manner consistent with section 2031 of the Internal Re-*
13 *venue Code of 1954.*
14 *(d) SUBORDINATION OF DEBT.—If any employer or*
15 *employers liable to the corporation under this section or sec-*
16 *tion 464 neglects or refuses to repay, after demand, the amount*
17 *of such liability (including the interest) there shall be a lien*
18 *in favor of the United States upon all property and rights*
19 *of property, whether real or personal, belonging to such*
20 *employer or employers, against the interest of any other*
21 *creditor of such employer or employers, other than a lien*
22 *under section 6321 or 6324 of the Internal Revenue Code*
23 *of 1954 (relating to lien for taxes), or a lien or other secu-*
24 *rity interest perfecting not later than 30 days after termina-*
25 *tion securing an obligation incurred by such employer or*

1 *employers prior to termination. Notwithstanding the provi-*
2 *sions of the preceding sentence, if the corporation determines,*
3 *with the consent of the board of directors, that subordination*
4 *of the lien to any other creditor of the employer or employers*
5 *would not adversely affect the collection of such liability, or*
6 *that the amount realizable by the corporation from the prop-*
7 *erty to which the lien attaches will ultimately be increased*
8 *by such subordination, and that the ultimate collection of*
9 *the liability will be facilitated by such subordination, and*
10 *the corporation issues a certificate of subordination of the*
11 *lien with respect to such property, or any part thereof.*
12 *(e) SUCCESSOR LIABILITY.—For purposes of this sec-*
13 *tion the following rules apply in the case of certain corpora-*
14 *tion reorganizations—*
15 *(1) CHANGE IN IDENTITY, ETC.—If an employer*
16 *ceases to exist by reason of a reorganization which*
17 *involves a mere change in identify, form, or place of*
18 *organization, however effected, a successor corporation*
19 *resulting from such reorganization shall be treated as*
20 *the employer to whom this section applies.*
21 *(2) LIQUIDATION INTO PARENT.—If an employer*
22 *ceases to exist by reason of a liquidation into a parent*
23 *corporation, the parent corporation shall be treated as*
24 *the employer to whom this section applies.*

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1 *(3) Reorganization.—If an employer ceases to*
2 *exist by reason of a merger or consolidation, the suc-*
3 *cessor corporation shall be treated as the employer to*
4 *whom this section applies.*
5 *(f) Remaining in Business.—For purposes of subsec-*
6 *tion (a), an employer shall be considered to remain in busi-*
7 *ness if, during the plan year within which the plan terminates*
8 *or the 36-month period following the date of termination, the*
9 *employer—*
10 *(1) is a party to a reorganization described in sub-*
11 *section (e), or*
12 *(2) continues to carry on the same business as, or*
13 *a business similar to, the business in connection with*
14 *which he maintained the plan which was terminated,*
15 *without regard to whether he continues to carry on such*
16 *business at the same location or at a different location.*
17 *For purposes of paragraph (2), in the case of a business in*
18 *which sales are the primary income producing factors, if an*
19 *employer's gross sales during the year of plan termination*
20 *or during the 12-month period following the date of termina-*
21 *tion in such business are less than 25 percent of his average*
22 *gross sales in such business for the 3 years immediately pre-*
23 *ceding that year, the employer shall not be considered to have*
24 *remained in business.*

1 *(g) Termination of Substantial Facility.—If*
2 *an employer ceases operations at a facility in any location*
3 *and, as a result of such cessation of operations, more than*
4 *20 percent of the total number of his employees who are*
5 *participants under a plan established and maintained by him*
6 *are separated from employment the employer shall be treated*
7 *with respect to that plan as if he were a substantial employer*
8 *under a multiemployer plan and the provisions of sections*
9 *463 and 464 shall apply.*

10 ***SEC. 463. LIABILITY OF SUBSTANTIAL EMPLOYER FOR***
11 ***WITHDRAWAL.***

12 *(a) General Rule.—Except as provided in subsec-*
13 *tion (d), the plan administrator of a multiemployer plan—*
14 *(1) shall notify the corporation of the withdrawal*
15 *of a substantial employer from the plan, within 60 days*
16 *after such withdrawal, and*
17 *(2) request that the corporation determine the lia-*
18 *bility of such employer under this title with respect to*
19 *such withdrawal.*
20 *The corporation shall, as soon as practical thereafter, deter-*
21 *mine whether such employer is liable for any amount under*
22 *this title with respect to the withdrawal and notify such*
23 *employer of such liability.*
24 *(b) Liability of Employer.—Except as provided in*
25 *subsection (c) an employer who withdraws from a plan to*

1 *which section 421 applies, during a plan year for which*
2 *he was a substantial employer, and who is notified by the*
3 *corporation as provided by subsection (a), shall be liable*
4 *to the corporation in accordance with the provisions of sec-*
5 *tion 461 (without regard to the provisions of paragraphs*
6 *(1) and (2) of section 462(a)) and this section. The*
7 *amount of such employer's liability shall be computed on the*
8 *basis of an amount determined by the corporation to be the*
9 *amount described in section 461 for the entire plan, as if the*
10 *plan had been terminated by the corporation on the date of*
11 *the employer's withdrawal, multiplied by a fraction—*
12 *(1) the numerator of which is the total amount*
13 *contributed to the plan by such employer for the last*
14 *5 years ending prior to the withdrawal, and*
15 *(2) the denominator of which is the total amount*
16 *contributed to the plan by all employers for such last*
17 *5 years.*
18 *Any amount collected by the corporation under this subsec-*
19 *tion shall be held in escrow subject to disposition in accord-*
20 *ance with the provisions (2) and (3) of subsection (c).*
21 *(c) SPECIAL RULE.—*
22 *(1) FURNISHING OF BOND.—In lieu of payment of*
23 *his liability under this section the employer may be*
24 *required to furnish a bond to the corporation in an*
25 *amount not exceeding 150 percent of his liability to*

1 *insure payment of his liability under this section. Such*
2 *bond shall be in such form and with such surety or*
3 *sureties and upon such conditions as the corporation may*
4 *require.*
5 *(2) No termination within 5-year period.—*
6 *If the plan is not terminated within the 5-year period*
7 *commencing on the day of withdrawal, the liability*
8 *of such employer shall be abated and any payment held*
9 *in escrow shall be refunded without interest to the em-*
10 *ployer (or his bond canceled) in accordance with by-*
11 *laws or rules prescribed by the corporation.*
12 *(3) Termination within 5-year period.—If*
13 *the plan terminates within the 5-year period commencing*
14 *on the day of withdrawal, the corporation shall—*
15 *(A) demand payment or realize on the bond*
16 *and hold such amount in escrow for the benefit of*
17 *the plan;*
18 *(B) treat any escrowed payments under this*
19 *section as if they were plan assets and apply them*
20 *in a manner consistent with this title; and*
21 *(C) refund any amount to the employer which*
22 *is not required to meet any obligation of the corpo-*
23 *ration with respect to the law.*
24 *(d) Alternative Procedure.—The provisions of this*
25 *subsection shall apply in the case of a withdrawal described*

1 *in subsection (a), and the provisions of subsections (b) and*
2 *(c) shall not apply, if the corporation determines that the*
3 *procedure provided for under this subsection is consistent*
4 *with the purposes of this section and section 464 and is more*
5 *appropriate in the particular case. Upon a showing by the*
6 *plan administrator of a multiemployer plan that the with-*
7 *drawal from the plan by any employer or employers has*
8 *resulted, or will result, in a significant reduction in the*
9 *amount of aggregate contributions to or under the plan by*
10 *employers, the corporation may—*
11 *(1) require the plan fund to be equitably allocated*
12 *between those participants no longer working in covered*
13 *service under the plan as a result of their employer's*
14 *withdrawal, and those participants who remain in cov-*
15 *ered service under the plan;*
16 *(2) treat that portion of the plan fund allocable*
17 *under paragraph (1) to participants no longer in cov-*
18 *ered service as a termination; and*
19 *(3) treat that portion of the plan fund allocable*
20 *to participants remaining in covered service as a new*
21 *plan.*
22 *(e) No Withdrawal Liability Under Alterna-*
23 *tive Procedure.—The corporation is authorized to waive*
24 *the application of the provisions of subsections (b), (c), and*
25 *(d) of this section to any employer or plan administrator*

1 *whenever it determines that there is an indemnity agreement*
2 *in effect among all other employers under the plan which is*
3 *adequate to satisfy the purposes of this section and of section*
4 *464.*

5 *(f) RULES.—The corporation is authorized to prescribe*
6 *rules as it deems necessary in order to implement the purposes*
7 *of this section.*

8 ***SEC. 464. LIABILITY OF EMPLOYERS ON TERMINATION***
9 ***OF MULTIEMPLOYER PLAN.***

10 *(a) APPLICATION OF SECTION.—This section shall ap-*
11 *ply to all employers who maintain a multiemployer plan at*
12 *the time such plan is terminated.*

13 *(b) LIABILITY OF SUCH EMPLOYER.—The corpora-*
14 *tion shall determine the liability of each such employer in a*
15 *manner consistent with section 462 except that the amount of*
16 *the liability determined under section 462(b)(1) with re-*
17 *spect to the entire plan shall be allocated to each employer by*
18 *multiplying such amount by a fraction—*

19 *(1) the numerator of which is the amount contrib-*
20 *uted to the plan by each employer for the last 5 plan*
21 *years ending prior to the termination, and*

22 *(2) the denominator of which is the total amount*
23 *contributed to the plan by all such employers for such*
24 *last 5 years,*

1 *and the limitation described in section 462(b)(2) shall be*
2 *applied separately to each employer.*
3 *SEC. 465. ANNUAL REPORT OF PLAN ADMINISTRATOR.*
4 *For each plan year for which section 421 applies to*
5 *a plan, the plan administrator shall file with the corpora-*
6 *tion, on a form prescribed by the corporation, an annual*
7 *report which identifies the plan and plan administrator and*
8 *which includes—*
9 *(1) a copy of each notification, required under sec-*
10 *tion 463 with respect to such year, and*
11 *(2) a statement disclosing whether any reportable*
12 *event (described in section 443(b)) occurred during*
13 *the plan year.*
14 *The report shall be filed within 6 months after the close of*
15 *the plan year to which it relates.*
16 *SEC. 466. ANNUAL NOTIFICATION TO SUBSTANTIAL*
17 *EMPLOYERS.*
18 *The plan administrator of each multiemployer plan shall*
19 *notify, within 6 months after the close of each plan year, any*
20 *employer making contributions under that plan who is de-*
21 *scribed in section 401(a)(2)(A) that he is a substantial*
22 *employer for that year.*

1 *SEC. 467. RECOVERY OF EMPLOYER LIABILITY FOR*
2 *PLAN TERMINATION.*
3 *(a) COLLECTION.—The corporation is authorized to*
4 *make arrangements with employers, liable under section 462,*
5 *463, or 464 for payment of their liability, including arrange-*
6 *ments for deferred payment on such terms and for such pe-*
7 *riods as the corporation deems equitable and appropriate.*
8 *(b) DISPOSITION OF EMPLOYER LIABILITY PAY-*
9 *MENTS.—Any amounts received by the corporation as pay-*
10 *ments of employer liability under this part may be retained*
11 *by it and used to defray operating and administrative*
12 *expenses.*
13 *PART E—AMENDMENTS TO INTERNAL REVENUE*
14 *CODE OF 1954; EFFECTIVE DATES*
15 *SEC. 481. AMENDMENTS TO INTERNAL REVENUE CODE*
16 *OF 1954.*
17 *(a) SECTION 401(a).—Section 401(a) (relating to re-*
18 *quirements for qualification) is amended by inserting at the*
19 *end thereof the following new paragraphs:*
20 *"(14) In the case of a plan which is required to*
21 *register with the Secretary or his delegate under the*
22 *provisions of section 151 of the Retirement Income*

1 *Security for Employees Act, a trust forming part of*
2 *such plan shall not constitute a qualified trust under*
3 *this section unless the plan is so registered.*
4 *"(15) In the case of a plan which is required to*
5 *provide for determination of disputes under the pro-*
6 *visions of part A of title VI of the Retirement Income*
7 *Security for Employees Act, a trust forming a part of*
8 *such plan shall not constitute a qualified trust under*
9 *this section unless the plan so provides.*
10 *"(16) In the case of a plan to which section 421*
11 *of the Retirement Income Security for Employees Act, a*
12 *trust forming a part of such plan shall not constitute a*
13 *qualified trust under this section unless the plan provides*
14 *for the maintenance of insurance under title IV of such*
15 *Act.*
16 *"(17) A trust shall not constitute a qualified trust*
17 *under this section unless the plan of which it is a part*
18 *provides that, unless the participant and his employer*
19 *agree otherwise in writing, the payment of benefits under*
20 *the plan to which section 411 applies will commence not*
21 *later than the later of the thirtieth day after—*
22 *"(A) the date on which the participant attains*
23 *the age of 65 years, or*
24 *"(B) the date on which the participant com-*
25 *pletes 10 years of participation in the plan.".*

1 *(b) SECTION 162.—Section 162 (relating to trade or*
2 *business expenses) is amended by redesignating subsection*
3 *(h) as (i) and inserting after subsection (g) the following*
4 *new subsection:*
5 *"(h) INSURED PENSION LOSSES.—No deductions shall*
6 *be allowed under subsection (a) for any payment to the*
7 *Pension Benefit Guaranty Corporation with respect to lia-*
8 *bility for a plan termination.".*
9 *(c) SECTION 4981.—Subtitle D (relating to miscel-*
10 *laneous excise taxes) is amended by adding at the end thereof*
11 *the following new chapter:*

12 ***"CHAPTER 45—CERTAIN GUARANTEED***
13 ***BENEFIT PLANS***

"Sec. 4981. Excise tax on privilege of maintaining insured plan.

14 ***"SEC. 4981. EXCISE TAX ON PRIVILEGE OF MAINTAINING***
15 ***INSURED PLAN.***
16 *"(a) IMPOSITION OF TAX.—There is hereby imposed*
17 *on the privilege of maintaining a plan insured under the*
18 *provisions of title IV of the Retirement Income Security for*
19 *Employees Act a tax determined under subsection (b) for*
20 *any plan year during which section 421 of such Act ap-*
21 *plies at any time.*
22 *"(b) RATE OF TAX.—*
23 *"(1) IN GENERAL.—Except as provided in para-*
24 *graph (2), the rate of tax for a plan year shall be*

1 *equal to the rate contained in the coverage schedule in*
2 *effect for that plan year under subparagraph (A) (in*
3 *the case of a plan which is not a multiemployer plan) or*
4 *subparagraph (B) (in the case of a multiemployer plan)*
5 *of section 403(c)(2) of the Retirement Income Security*
6 *for Employees Act.*
7 *"(2) ALTERNATE TAX.—In the case of a taxpayer*
8 *to which subparagraph (C) (in the case of a plan which*
9 *is not a multiemployer plan) or subparagraph (D) (in*
10 *the case of a multiemployer plan) of section 403(c)(2)*
11 *of the Retirement Income Security for Employees Act*
12 *applies, the rate of tax for a plan year shall be equal to*
13 *the rate contained in the coverage schedule in effect for*
14 *that plan year under such subparagraph.*
15 *"(c) BY WHOM PAYABLE.—The tax imposed under*
16 *subsection (a) shall be paid by the administrator (as defined*
17 *in section 3(15) of the Welfare and Pension Plans Dis-*
18 *closure Act) of a plan.*
19 *"(d) EXCEPTION.—This section shall not apply with*
20 *respect to a plan year in which the plan terminates under*
21 *section 441 or 442 of the Retirement Income Security for*
22 *Employees Act.*
23 *"(e) DEFINITION OF MULTIEMPLOYER PLAN.—The*
24 *term 'multiemployer plan' means a plan described in section*

1 *401(3) of the Retirement Income Security for Employees*
2 *Act.*
3 *"(f) CROSS REFERENCE.—*

"For penalties and other general and administrative provisions applicable to this section, see subtitle F.".

4 *(d) AMENDMENT OF SECTION 6511.—Section 6511*
5 *(d) (relating to special rules applicable to income taxes) is*
6 *amended by adding at the end thereof the following new*
7 *paragraph:*
8 *"(8) SPECIAL PERIOD OF LIMITATION WITH RE-*
9 *SPECT TO AMOUNTS INCLUDED IN INCOME SUBSE-*
10 *QUENTLY RECAPTURED UNDER QUALIFIED PLAN*
11 *TERMINATION.—If the claim for credit or refund relates*
12 *to an overpayment of tax imposed by subtitle A on*
13 *account of the recapture, under section 445 of the*
14 *Retirement Income Security for Employees Act, of*
15 *amounts included in income for a prior taxable year,*
16 *the 3-year period of limitation prescribed in subsection*
17 *(a) shall be extended until the date which occurs one*
18 *year after the date on which such recaptured amount*
19 *is paid by the taxpayer.".*
20 *(e) CONFORMING AMENDMENTS.—*
21 *(1) Section 404(a)(2) (relating to deduction for*
22 *contributions of an employer to employees' annuity*
23 *plan) is amended by striking out "and (8), and if appli-*

cable, the requirements of section 401(a) (9) and (10) and of section 401(d) (other than paragraph (1)),"

and inserting in lieu thereof "(8), (11), (12), 13, (14), (15), and (16), and, if applicable, the requirements of section 401(a) (9) and (10), of section 401 (c)(6), and of section 401(d) (other than paragraph (1)),".

(2) Section 805(d)(1)(C) (relating to definition of pension plan reserves) is amended by striking out "and (8)" and inserting in lieu thereof "(8), (11), (12), (13), (14), (15), and (16)".

(f) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"Chapter 45. Certain guaranteed benefit plans.".

SEC. 482. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), this title shall take effect on the date of enactment of this Act.

(b) PRIVILEGE TAX.—The amendments made by section 481 shall apply with respect to plan years and taxable years beginning after December 31, 1973.

(c) TERMINATIONS; LIABILITY.—Part C and part D shall apply with respect to plan years beginning after December 31, 1976, unless the corporation determines that moneys

1 *in the fund are sufficient to enable it to meet its liability*
2 *under section 461 with respect to terminations occurring*
3 *before that date.*

4 ***PART F—ALLOCATION OF ASSETS WHERE***
5 ***SECTION 444 DOES NOT APPLY***

6 ***SEC. 491. ALLOCATION OF ASSETS FOR PLAN TERMINA-***
7 ***TIONS NOT COVERED.***

8 *(a) IN GENERAL.—If a plan to which this title applies*
9 *is terminated and the provisions of section 444 do not apply*
10 *to that termination, the administrator of the plan shall al-*
11 *locate the assets of the plan in accordance with the provisions*
12 *of that section (without regard to the 3-year pay status for*
13 *benefits rule of paragraph (3)).*

14 *(b) APPLICATION OF SECTION.—The provisions of*
15 *subsection (a) shall apply with respect to the termination*
16 *of any plan other than a plan which is in existence on the*
17 *date of enactment of this Act and with respect to which there*
18 *is in effect on such date a written provision governing alloca-*
19 *tion of assets under the plan upon termination.*

20 ***TITLE V—DISCLOSURE AND***
21 ***FIDUCIARY STANDARDS***

22 *PART A—DISCLOSURE*

23 *AUTHORITY TO ISSUE REGULATIONS*

24 *SEC. 501. (a) The Secretary of Labor shall have author-*
25 *ity to issue such rules and regulations as are necessary to*

1 *implement the provisions of this Act and the Welfare and*
2 *Pension Plans Disclosure Act.*
3 *(b) In order to avoid unnecessary expenses and dupli-*
4 *cation of functions among government agencies the Secre-*
5 *tary may make such arrangements or agreements for coop-*
6 *eration or mutual assistance in the performance of his func-*
7 *tions under this Act and the Welfare and Pension Plans*
8 *Disclosure Act and the functions of any agency, Federal*
9 *or State, as he may find to be practicable and consistent*
10 *with law. The Secretary may utilize on a reimbursable*
11 *or other basis the facilities or services of any department,*
12 *agency, or establishment of the United States or of any State*
13 *including services of any of its employees with the lawful*
14 *consent of such department, agency, or establishment; and*
15 *each department, agency, or establishment of the United*
16 *States is authorized and directed to cooperate with the Sec-*
17 *retary and to the extent permitted by law to provide such*
18 *information and facilities as the Secretary may request for*
19 *his assistance in the performance of his functions under*
20 *this Act.*

21 *AMENDMENT TO WELFARE AND PENSION PLANS*
22 *DISCLOSURE ACT*

23 *SEC. 502. (a) Section 3 of the Welfare and Pension*
24 *Plans Disclosure Act (72 Stat. 997) is amended by adding*
25 *at the end thereof the following new paragraphs:*

1 *"(14) The term 'relative' means a spouse, ancestor,*
2 *descendant, brother, sister, son-in-law, daughter-in-law,*
3 *father-in-law, mother-in-law, brother-in-law, or sister-in-*
4 *law.*

5 *"(15) The term 'administrator' means—*

6 *"(A) the person specifically so designated by the*
7 *terms of the plan, collective bargaining agreement, trust*
8 *agreement, contract, or other instrument, under which*
9 *the plan is operated; or*

10 *"(B) in the absence of such designation (i) the*
11 *employer in the case of an employee benefit plan estab-*
12 *lished or maintained by a single employer, (ii) the*
13 *employee organization in the case of a plan established*
14 *or maintained by an employee organization, or (iii) the*
15 *association, committee, joint board of trustees, or other*
16 *similar group of representatives of the parties who estab-*
17 *lished or maintained the plan, in the case of a plan es-*
18 *tablished or maintained by two or more employers or*
19 *jointly by one or more employers and one or more*
20 *employee organizations.*

21 *"(16) The term 'employee benefit plan' or 'plan' means*
22 *an employee welfare benefit plan or an employee pension*
23 *benefit plan or a plan providing both welfare and pension*
24 *benefits.*

1 *"(17) The term 'employee benefit fund' or 'fund' means*
2 *a fund of money or other assets maintained pursuant to or*
3 *in connection with an employee benefit plan and includes*
4 *employee contributions withheld but not yet paid to the plan*
5 *by the employer. The term does not include: (A) any*
6 *assets of an investment company subject to regulation under*
7 *the Investment Company Act of 1940; (B) premium, sub-*
8 *scription charges, or deposits received and retained by an*
9 *insurance carrier or service or other organization, except for*
10 *any separate account established or maintained by an in-*
11 *surance carrier.*
12 *"(18) The term 'separate account' means an account*
13 *established or maintained by an insurance company under*
14 *which income, gains, and losses, whether or not realized,*
15 *from assets allocated to such account, are, in accordance*
16 *with the applicable contract, credited to or charged against*
17 *such account without regard to other income, gains, or losses*
18 *of the insurance company.*
19 *"(19) The term 'adequate consideration' when used in*
20 *section 15 means either (A) at no more than the price of*
21 *the security prevailing on a national securities exchange*
22 *which is registered with the Securities and Exchange Com-*
23 *mission, or (B) if the security is not traded on such a*
24 *national securities exchange, at a price not less favorable to*
25 *the fund than the offering price for the security as established*

1 *by the current bid and asked prices quoted by persons inde-*
2 *pendent of the issuer, or (C) if the price of the security is*
3 *not quoted by persons independent of the issuer, a price*
4 *determined to be the fair value of the security.*
5 *"(20) The term 'nonforfeitable pension benefit' means*
6 *a legal claim obtained by a participant or his beneficiary to*
7 *that part of an immediate or deferred pension benefit which,*
8 *notwithstanding any conditions subsequent which would af-*
9 *fect receipt of any benefit flowing from such right, arises from*
10 *the participant's covered service under the plan and is no*
11 *longer contingent on the participant remaining covered by*
12 *the plan.*
13 *"(21) The term 'covered service' means that period of*
14 *service performed by a participant for an employer or as a*
15 *member of an employee organization which is recognized*
16 *under the terms of the plan or the collective-bargaining agree-*
17 *ment (subject to the requirements of the Retirement Income*
18 *Security for Employees Act), for purposes of determining a*
19 *participant's eligibility to receive pension benefits or for de-*
20 *termining the amount of such benefits.*
21 *"(22) The term 'pension benefit' means the aggregate,*
22 *annual, monthly, or other amounts to which a participant has*
23 *or will become entitled upon retirement or to which any*
24 *other person is entitled by virtue of such participant's death.*
25 *"(23) The term 'accrued portion of normal retirement*

1 *benefit' means that amount of such benefit which, irrespective*
2 *of whether the right to such benefit is nonforfeitable, is equal*
3 *to—*
4 *"(A) in the case of a profit-sharing-retirement*
5 *plan or money purchase plan, the total amount credited*
6 *to the account of a participant;*
7 *"(B) in the case of a unit benefit-type pension*
8 *plan, the benefit units credited to a participant; or*
9 *"(C) in the case of other types of pension plans,*
10 *that portion of the prospective normal retirement bene-*
11 *fit of a participant that, pursuant to rule or regulation*
12 *under the Retirement Income Security for Employees*
13 *Act, is determined to constitute the participant's accrued*
14 *portion of the normal retirement benefit under the terms*
15 *of the appropriate plan.*
16 *"(24) The term 'security' means any note, stock, treas-*
17 *ury stock, bond, debenture, evidence of indebtedness, certifi-*
18 *cate of interest or participation in any profit-sharing*
19 *agreement, collateral-trust certificate, preorganization certifi-*
20 *cate or subscription, transferable share, investment contract,*
21 *voting-trust certificate, certificate of deposit for a security,*
22 *fractional undivided interest in, or, in general, any interest*
23 *or instrument commonly known as a security, or any certifi-*
24 *cate of interest or participation in, temporary or interim cer-*

1 *tificate for, receipt for, guarantee of, or warrant or right to*
2 *subscribe to or purchase, any of the foregoing.*
3 *"(25) The term 'fiduciary' means any person who exer-*
4 *cises any power of control, management, or disposition with*
5 *respect to any moneys or other property of any employee*
6 *benefit fund, or has authority or responsibility to do so.*
7 *"(26) The term 'market value' or 'value' when used in*
8 *this Act means fair market value where available, and other-*
9 *wise the fair value as determined pursuant to rule or regula-*
10 *tion under this Act.".*
11 *(b) Paragraph (1) of section 3 of such Act is amended*
12 *by inserting the words "or maintained" after the word*
13 *"established", by inserting a comma after the word "unem-*
14 *ployment", and by adding the following: "or benefits of the*
15 *type described or permitted by section 302(c) of the Labor*
16 *Management Relations Act".*
17 *(c) Paragraph (2) of section 3 of such Act is amended*
18 *by inserting the words "or maintained" after the word*
19 *"established".*
20 *(d) Paragraph (3) of section 3 of such Act is amended*
21 *by striking out the word "plan" the first time it appears and*
22 *inserting in lieu thereof the word "program".*
23 *(e) Paragraphs (3), (4), (6), and (7) of section 3*
24 *of such Act are amended by striking out the words "welfare*
25 *or pension" wherever they appear.*

1 *(f) Paragraph (13) of section 3 of such Act is amended*
2 *to read as follows:*
3 *"(13) The term 'party in interest' means as to an em-*
4 *ployee benefit plan or fund, any administrator, officer, fidu-*
5 *ciary, trustee, custodian, counsel, or employee of any*
6 *employee benefit plan, or a person providing benefit*
7 *plan services to any such plan, or an employer, any of*
8 *whose employees are covered by such a plan or any person*
9 *controlling, controlled by, or under common control with,*
10 *such employer or officer or employee or agent of such em-*
11 *ployer or such person, or an employee organization having*
12 *members covered by such plan, or an officer or employee or*
13 *agent of such an employee organization, or a relative, part-*
14 *ner, or joint venturer or any of the above-described persons.*
15 *Whenever the term 'party in interest' is used in this Act,*
16 *it shall mean a person known or should have been known to*
17 *be a party in interest. If any moneys or other property of an*
18 *employee benefit fund are invested in shares of an invest-*
19 *ment company registered under the Investment Company*
20 *Act of 1940, such investment shall not cause such invest-*
21 *ment company or such investment company's investment*
22 *adviser or principal underwriter to be deemed to be a 'fidu-*
23 *ciary' or a 'party in interest' as those terms are defined in this*
24 *Act, except insofar as such investment company or its invest-*
25 *ment adviser or principal underwriter acts in connection with*

1 *an employee benefit fund established or maintained pursuant*
2 *to an employee benefit plan covering employees of the invest-*
3 *ment company, the investment adviser, or its principal under-*
4 *writer. Nothing contained herein shall limit the duties im-*
5 *posed on such investment company, investment adviser, or*
6 *principal underwriter by any other provision of law.".*
7 *(g) Section 4(a) of the Welfare and Pension Plans*
8 *Disclosure Act is amended by striking out the words "wel-*
9 *fare or pension", "or employers", and "or organizations"*
10 *wherever they appear.*
11 *(h) Paragraph (3) of section 4(b) of such Act is*
12 *amended to read as follows:*
13 *"(3) Such plan is administered by a religious orga-*
14 *nization described under section 501(c) of the Internal*
15 *Revenue Code of 1954 which is exempt from taxation under*
16 *the provisions of section 501(a) of such Code;"*
17 *(i) Section 4(b)(4) of such Act is repealed.*
18 *(j) Section 4(b) of such Act is further amended by*
19 *adding at the end thereof the following new paragraph:*
20 *"(5) Such plan is established or maintained outside*
21 *the United States primarily for the benefit of employees*
22 *who are not citizens of the United States and the situs of*
23 *the employee benefit plan fund established or maintained*
24 *pursuant to such plan is maintained outside the United*
25 *States."*

1 *(k) Section 5(b) of the Welfare and Pension Plans*
2 *Disclosure Act is amended to read as follows:*
3 *"(b) The Secretary may require the filing of special*
4 *terminal reports on behalf of an employee benefit plan which*
5 *is winding up its affairs (whether or not the plan has*
6 *terminated), including any period during which the plan has*
7 *moneys or other assets remaining and for one hundred and*
8 *fifty days thereafter. Such reports may be required to be filed*
9 *regardless of the number of participants remaining in the*
10 *plan and shall be in such form and filed in such manner as*
11 *the Secretary may prescribe."*
12 *(l) Section 5 of such Act is further amended by adding*
13 *at the end thereof the following new subsection:*
14 *"(c) The Secretary may by regulation, as to any class*
15 *or type of employee benefit plans—*
16 *"(1) grant an exemption from all or part of the*
17 *reporting, disclosure, and publication requirements of*
18 *this Act; or*
19 *"(2) provide a variance in the form or manner of*
20 *reporting, disclosure and publication required by this*
21 *Act; or both,*
22 *if he finds that the exemption or variance is necessary or*
23 *appropriate and consistent with the purposes of this Act.*
24 *Any such exemption or variance may be granted on such*
25 *conditions as the Secretary may deem appropriate. The*

1 *Secretary shall prescribe by general rule simplified reports*
2 *for plans which cover less than 100 participants and which*
3 *maintain an employee benefit fund with less than $100,000*
4 *in assets, except that nothing contained herein shall pre-*
5 *clude the Secretary from requiring any information or data*
6 *from such plans where he finds such data or information*
7 *necessary to carry out the purposes of this Act nor shall*
8 *the Secretary be precluded from revoking provisions for*
9 *simplified forms for any such plan if he finds it necessary*
10 *to do so in order to carry out the objectives of this Act.".*
11 *(m) Section 6 of the Welfare and Pension Plans Dis-*
12 *closure Act is amended to read as follows:*
13 *"SEC. 6. (a) A description of any employee benefit*
14 *plan shall be published as required herein within ninety days*
15 *after the establishment of such plan or when such plan be-*
16 *comes subject to this Act.*
17 *"(b) The description of the plan shall be comprehen-*
18 *sive, written in a manner calculated to be understood by the*
19 *average participant, and shall include the name and type of*
20 *administration of the plan; the name and address of the ad-*
21 *ministrator; the names and addresses of any person or per-*
22 *sons responsible for the management or investment of plan*
23 *funds; the schedule of benefits; a description of the provisions*
24 *providing for vested benefits; the source of the financing*
25 *of the plan and indentity of any organization through which*

1 *benefits are provided; whether records of the plan are kept*
2 *on a calendar year basis, or on a policy or other fiscal year*
3 *basis, and if on the latter basis, the date of the end of such*
4 *policy or fiscal year; the procedures to be followed in present-*
5 *ing claims for benefits under the plan and the remedies avail-*
6 *able under the plan for the redress of claims which are denied*
7 *in whole or in part. Amendments to the plan reflecting*
8 *changes in the data and information included in the original*
9 *plan, other than data and information also required to be*
10 *included in annual reports under section 7, shall be included*
11 *in the description on and after the effective date of such*
12 *amendments. Any change in the information required by*
13 *this subsection shall be reported in accordance with regula-*
14 *tions prescribed by the Secretary.".*

15 *(n) Subsection (a) of section 7 of the Welfare and*
16 *Pension Plans Disclosure Act is amended by adding the*
17 *number "(1)" after the letter "(a)", and by striking out*
18 *that part of the first sentence which precedes the word "if"*
19 *the first time it appears and inserting in lieu thereof the words*
20 *"An annual report shall be published with respect to any*
21 *employee benefit plan if the plan provides for an employee*
22 *benefit fund subject to section 15 of this Act or".*

23 *(o) Section 7(a)(1) of such Act is further amended by*
24 *striking out the word "investigation" and inserting in lieu*
25 *thereof the words "notice and opportunity to be heard", by*

1 *striking out the words "year (or if" and inserting in lieu*
2 *thereof the words "policy or fiscal year on which", adding a*
3 *period after the word "kept", and striking out all the words*
4 *following the word "kept".*

5 *(p) Section 7(a) of such Act is further amended by*
6 *adding the following paragraphs:*

7 *"(2) If some or all of the benefits under the plan are*
8 *provided by an insurance carrier or service or other or-*
9 *ganization, such carrier or organization shall certify to the*
10 *administrator of such plan, within one hundred and twenty*
11 *days after the end of each calendar, policy, or other fiscal*
12 *year, as the case may be, such information as determined by*
13 *the Secretary to be necessary to enable such administrator to*
14 *comply with the requirements of this Act.*

15 *"(3) The administrator of an employee benefit plan*
16 *shall cause an audit to be made annually of the employee*
17 *benefit fund established in connection with or pusurant to the*
18 *provisions of the plan. Such audit shall be conducted subject*
19 *to regulations of the Secretary and in accordance with gen-*
20 *erally accepted standards of auditing by an independent*
21 *certified or licensed public accountant, but nothing herein*
22 *shall be construed to require such an audit of the books or*
23 *records of any bank, insurance company, or other institu-*
24 *tion providing insurance, investment, or related function*
25 *for the plan, if such books or records are subject to pe-*

1 *riodic examination by any agency of the Federal Govern-*
2 *ment or the government of any State. The auditor's opinion*
3 *and comments with respect to the financial information re-*
4 *quired to be furnished in the annual report by the plan*
5 *administrator shall form a part of such report.".*
6 *(q) Sections 7 (b) and (c) of such Act are amended*
7 *to read as follows:*
8 *"(b) A report under this section shall include—*
9 *"(1) the amount contributed by each employer;*
10 *the amount contributed by the employees; the amount*
11 *of benefits paid or otherwise furnished; the number of*
12 *employees covered; a statement of assets, liabilities, re-*
13 *ceipts, and disbursements of the plan; a detailed state-*
14 *ment of the salaries and fees and commissions charged*
15 *to the plan, to whom paid, in what amount, and for*
16 *what purposes; the name and address of each fiduciary,*
17 *his official position with respect to the plan, his rela-*
18 *tionship to the employer of the employees covered by the*
19 *plan, or the employee organization, and any other office,*
20 *position, or employment he holds with any party in*
21 *interest;*
22 *"(2) a schedule of all investments of the fund show-*
23 *ing as of the end of the fiscal year:*
24 *"(A) the aggregate cost and aggregate value*
25 *of each security, by issuer,*

1 *"(B) the aggregate cost and aggregate value,*
2 *by type or category, of all other investments, and*
3 *separately identifying (i) each investment, the value*
4 *of which exceeds 3 per centum of the value of the*
5 *fund and (ii) each investment in securities or prop-*
6 *erties of any person known to be a party in interest;*
7 *"(3) a schedule showing the aggregate amount,*
8 *by type of security, of all purchases, sales, redemptions,*
9 *and exchanges of securities made during the reporting*
10 *period; a list of the issuers of such securities; and in*
11 *addition, a schedule showing, as to each separate trans-*
12 *action with or without respect to securities issued by any*
13 *person known to be a party in interest, the issuer, the*
14 *type and class of security, the quantity involved in the*
15 *transaction, the gross purchase price, and in the case*
16 *of a sale, redemption, or exchange, the gross and net*
17 *proceeds (including a description and the value of any*
18 *consideration other than money) and the net gain or*
19 *loss, except that such schedule shall not include distribu-*
20 *tion of stock or other distributions in kind from profit-*
21 *sharing or similar plans to participants separated from*
22 *the plan;*
23 *"(4) a schedule of purchases, sales, or exchanges*
24 *during the year covered by the report of investment*
25 *assets other than securities—*

1 *"(A) by type or category of asset the aggre-*
2 *gate amount of purchases, sales, and exchanges; the*
3 *aggregate expenses incurred in connection there-*
4 *with; and the aggregate net gain (or loss) on sales,*
5 *and*
6 *"(B) for each transaction involving a person*
7 *known to be a party in interest and for each trans-*
8 *action involving over 3 per centum of the fund, an*
9 *indication of each asset purchased, sold, or exchanged*
10 *(and, in the case of fixed assets such as land, build-*
11 *ings, and leaseholds, the location of the asset);*
12 *purchase or selling price; expenses incurred in con-*
13 *nection with the purchase, sale, or exchange; the*
14 *cost of the asset and the net gain (or loss) on each*
15 *sale; the identity of the seller in the case of a pur-*
16 *chase, or the identity of the purchaser in the case of*
17 *a sale, and his relationship to the plan, the employer,*
18 *or any employee organization;*
19 *"(5) a schedule of all loans made from the fund*
20 *during the reporting year or outstanding at the end of*
21 *the year, and a schedule of principal and interest pay-*
22 *ments received by the fund during the reporting year,*
23 *aggregated in each case by type of loan, and in addition,*
24 *a separate schedule showing as to each loan which—*

1 *"(A) was made to a party in interest, or*

2 *"(B) was in default, or*

3 *"(C) was written off during the year as un-*

4 *collectable, or*

5 *"(D) exceeded 3 per centum of the value of*

6 *the fund,*

7 *the original principal amount of the loan, the amount of*

8 *principal and interest received during the reporting*

9 *year, the unpaid balance, the identity and address of the*

10 *loan obligor, a detailed description of the loan (includ-*

11 *ing date of making and maturity, interest rate, the type*

12 *and value of collateral, and the material terms), the*

13 *amount of principal and interest overdue (if any) and*

14 *as to loans written off as uncollectable an explanation*

15 *thereof;*

16 *"(6) a list of all leases with—*

17 *"(A) persons other than parties in interest*

18 *who are in default, and*

19 *"(B) any party in interest,*

20 *including information as to the type of property leased*

21 *(and, in the case of fixed assets such as land, buildings,*

22 *leaseholds, and so forth, the location of the property),*

23 *the identify of the lessor or lessee from or to whom the*

24 *plan is leasing, the relationship of such lessors and les-*

25 *sees, if any, to the plan, the employer, employee organi-*

zation, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; if property is leased from persons described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, the expenses paid for the leased property during the reporting period, the net receipt from the lease, and with respect to any such leases in default, their identify, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

"(7) a detailed list of purchases, sales, exchanges, or any other transactions with any party in interest made during the year, including information as to the asset involved, the price, any expenses connected with the transaction, the cost of the asset, the proceeds, the net gain or loss, the identity of the other party to the transaction and his relationship to the plan;

"(8) subject to rules of the Secretary designed to preclude the filing of duplicate or unnecessary statements, if some or all of the assets of a plan or plans are

1 *held in a common or collective trust maintained by a*
2 *bank or similar institution or in a separate account main-*
3 *tained by an insurance carrier, the report shall include*
4 *a statement of assets and liabilities and a statement of*
5 *receipts and disbursements of such common or collective*
6 *trust or separate account and such of the information*
7 *required under paragraphs (2), (3), (4), (5), (6),*
8 *and (7) of section 7(b) with respect to such common*
9 *or collective trust or separate account as the Secretary*
10 *may determine appropriate by regulation. In such case*
11 *the bank or similar institution or insurance carrier shall*
12 *certify to the administrator of such plan or plans, within*
13 *one hundred and twenty days after the end of each*
14 *calendar, policy, or other fiscal year, as the case may be,*
15 *the information determined by the Secretary to be neces-*
16 *sary to enable the plan administrator to comply with the*
17 *requirements of this Act; and*
18 *"(9) in addition to reporting the information called*
19 *for by this subsection, the administrator may elect to fur-*
20 *nish other information as to investment or reinvestment*
21 *of the fund as additional disclosures to the Secretary.*
22 *"(c) If the only assets from which claims against an*
23 *employee benefit plan may be paid are the general assets*
24 *of the employer or the employee organization, the report*
25 *shall include (for each of the past five years) the benefits*

paid and the average number of employees eligible for participation."

(r) Section 7(d) of such Act is amended by striking out the capital "T" in the word "The" the first time it appears in paragraphs (1) and (2) and inserting in lieu thereof a lowercase "t".

(s) Section 7(e) of such Act is amended to read as follows:

"(e) Every employee pension benefit plan shall include with its annual report (to the extent applicable) the following information:

"(1) the type and basis of funding,

"(2) the number of participants, both retired and nonretired, covered by the plan,

"(3) the amount of all reserves or net assets accumulated under the plan,

"(4) the present value of all liabilities for all nonforfeitable pension benefits and the present value of all other accrued liabilities,

"(5) the ratios of the market value of the reserves and assets described in (3) above to the liabilities described in (4) above,

"(6) a copy of the most recent actuarial report, and

"(A)(i) the actuarial assumptions used in computing the contributions to a trust or payments

under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be furnished under this subsection, insofar as any such actuarial assumptions are not included in the most recent actuarial report,

"(B)(i) if there is no such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for computing contributions or payments than are used for any other purpose, a statement explaining same; and

"(7) such other reasonable information pertinent to disclosure under this subsection as the Secretary may by regulation prescribe."

(t) Section 7 of such Act is further amended by striking out in their entirety subsections (f), (g), and (h).

ANNUAL REPORTS

SEC. 503. (a) Section 8 of the Welfare and Pension Plans Disclosure Act is amended by striking out subsections (a) and (b) in their entirety and by redesignating subsection (c) as subsection (a). The subsection redesignated as subsection (a) is further amended by striking out the words

"of plans" after the word "descriptions", striking out the word "the" before the word "annual" and adding the word "plan" before the word "descriptions".

(b) Such section is further amended by adding subsections (b), (c), (d), and (e), to read as follows:

"(b) The administrator of any employee benefit plan subject to this Act shall file with the Secretary a copy of the plan description and each annual report. The administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated, and any document so furnished shall be available for public inspection by the Secretary.

"(c) Publication of the plan descriptions and annual reports required by this Act shall be made to participants and beneficiaries of the particular plan as follows:

"(1) the administrator shall make copies of the plan description (including all amendments or modifications thereto) and the latest annual report and the bargaining agreement, trust agreement contract, or other instrument under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator;

1 *"(2) the administrator shall furnish to any plan*
2 *participant or beneficiary so requesting in writing a fair*
3 *summary of the latest annual report;*
4 *"(3) the administrator shall furnish or make avail-*
5 *able, whichever is most practicable: (1) to every partici-*
6 *pant upon his enrollment in the plan and within one*
7 *hundred and twenty days after each major amendment*
8 *to the plan, a summary of the plan's important pro-*
9 *visions, including the names and addresses of any person*
10 *or persons responsible for the management or investment*
11 *of plan funds, and requirements of the amendment,*
12 *whichever is applicable, written in a manner calculated*
13 *to be understood by the average participant; such ex-*
14 *planation shall include a description of the benefits avail-*
15 *able to the participant under the plan and circumstances*
16 *which may result in disqualification or ineligibility, and*
17 *the requirements of the Welfare and Pension Plans*
18 *Disclosure Act with respect to the availability of copies*
19 *of the plan bargaining agreement, trust agreement, con-*
20 *tract or other instrument under which the plan is estab-*
21 *lished or operated; and (ii) to every participant every*
22 *three years (commencing January 1, 1975), a revised*
23 *up-to-date summary of the plan's important provisions*
24 *and major amendments thereto, written in a manner cal-*
25 *culated to be understood by the average participant; and*

1 *(iii) to each plan participant or beneficiary so request-*
2 *ing in writing a complete copy of the plan description*
3 *(including all amendments or modifications thereto) or*
4 *a complete copy of the latest annual report, or both. He*
5 *shall in the same way furnish a complete copy of any*
6 *bargaining agreement, trust agreement, contract, or other*
7 *instrument under which the plan is established or op-*
8 *erated. In accordance with regulations of the Secretary,*
9 *an administrator may make a reasonable charge to cover*
10 *the cost of furnishing such complete copies.*
11 *"(d) The administrator of an employee pension benefit*
12 *plan shall furnish to any plan participant or beneficiary so*
13 *requesting in writing a statement indicating, on the basis of*
14 *the latest information available, (1) whether or not such*
15 *person has a nonforfeitable right to a pension benefit, (2)*
16 *the nonforfeitable pension benefits, if any, which have ac-*
17 *crued or the earliest date on which benefits will become non-*
18 *forfeitable, and (3) the total pension benefits accrued.*
19 *"(e) In the event a plan is provided a variance with*
20 *respect to standards of vesting, funding, or both, pursuant to*
21 *title II of the Retirement Income Security for Employees*
22 *Act, the administrator shall furnish or make available, which-*
23 *ever is most practiable, notice of such action to each partici-*
24 *pant in a manner calculated to be understood by the average*

1 *participant, and in such form and detail and for such periods*
2 *as may be prescribed by the Secretary.".*

3 *INVESTIGATIONS*

4 *SEC. 504. (a) Section 9(d) of the Welfare and Pension*
5 *Plans Disclosure Act is amended to read as follows:*
6 *"(d) The Secretary may make appropriate investi-*
7 *gations when he believes it necessary in order to determine*
8 *whether any person has violated or is about to violate any*
9 *provision of this Act or the Welfare and Pension Plans Dis-*
10 *closure Act and in connection therewith he may require*
11 *the filing of (1) any instruments under which the plan is*
12 *and has been operated, and (2) supporting schedules of the*
13 *financial information required to be furnished under either*
14 *Act and may enter such places, inspect such records and ac-*
15 *counts, and question such persons as he may deem necessary*
16 *to enable him to determine the facts relative to such investi-*
17 *gation, except that no periodic examination of the books and*
18 *records of any plan or fund shall be conducted more than*
19 *once annually unless the Secretary has reasonable cause to*
20 *believe there may exist a violation of this Act or any rule or*
21 *regulation issued thereunder. The Secretary shall make such*
22 *arrangements as are necessary with the Secretary of the*
23 *Treasury to preclude a duplication of effort with regard to*
24 *investigation of violations relating to fiduciaries. For the pur-*
25 *poses of any investigation described in this subsection, the*

provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents), of the Federal Trade Commission Act of September 16, 1914 (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officer designated by him. To the extent he considers appropriate the Secretary shall delegate his auditing and investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the 'appropriate Federal banking agency' as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).".

(b) Subsection (h) of section 9 of such Act is repealed and subsection (i) of such section is redesignated as subsection (h).

PUBLIC INFORMATION

SEC. 505. Section 10 of the Welfare and Pension Plan Disclosure Act is amended to read as follows:

"REPORTS MADE PUBLIC INFORMATION: RESEARCH AND STATISTICS

"SEC. 10. (a) The contents of plan descriptions and annual reports filed with the Secretary pursuant to this Act shall be public information and the Secretary may publish any such information and data as he may deem appropriate.

"(b) The Secretary shall develop and maintain a com-

1 *prehensive and effective program of collection, compilation,*
2 *and analysis of employee benefit plan information and data.*
3 *Such program shall relate to information and data whether*
4 *or not required to be furnished by this Act or the Retirement*
5 *Income Security for Employees Act and to employee bene-*
6 *fit plans whether or not subject to these Acts. Moreover the*
7 *Secretary is authorized and directed to undertake appropriate*
8 *studies relating to employee benefit plans including, but not*
9 *limited to, the effects of the Retirement Income Security for*
10 *Employees Act upon the provisions and costs of pension and*
11 *profit-sharing retirement plans, the role of private pensions*
12 *in meeting requirement security needs of the Nation, as well*
13 *as alternative methods of providing additional retirement*
14 *security, the administration and operations of pension plans*
15 *including types and levels of benefits, degree of reciprocity*
16 *or portability, financial characteristics and practices, methods*
17 *of encouraging the growth of private pension and profit-*
18 *sharing retirement plans, and the adequacy of coverage*
19 *under this Act and the Retirement Income Security for Em-*
20 *ployees Act. Without limiting the generality of the foregoing,*
21 *the Secretary shall also undertake a special study of the*
22 *sufficiency of the provisions of the Retirement Income Secu-*
23 *rity for Employees Act as applied to high mobility employees*
24 *and shall recommend such changes in existing law and regu-*
25 *lations as may be appropriate to afford to such employees*

1 *adequate protection against unreasonable forfeiture of pen-*
2 *sion credits as a result of frequent job changes inherent in*
3 *the conduct of their occupations or professions, and such*
4 *other changes as may be appropriate to provide more ade-*
5 *quate protection to such employees. In developing such rec-*
6 *ommendations, the Secretary shall consult with appropriate*
7 *Federal and State agencies, professional societies, industry*
8 *and labor representatives, and other professional societies,*
9 *industry and labor representatives, and other interested*
10 *groups with specialized knowledge of the problems of high*
11 *mobility workers. This special study shall be completed and*
12 *submitted to the Congress within three years after enactment*
13 *of the amendments to this Act.*
14 *"(c) To carry out his duties under this subsection the*
15 *Secretary may—*
16 *"(1) promote, encourage, or directly engage in*
17 *programs of studies, information, and communication*
18 *concerning employee benefit plans;*
19 *"(2) compile and publish such studies, analyses,*
20 *reports, and surveys as he may deem appropriate;*
21 *"(3) arrange, through grants or contracts for the*
22 *conduct of such research and investigations as he may*
23 *deem appropriate;*
24 *"(4) make such agreements as are necessary to*
25 *maintain the confidentiality of the source of any infor-*

1 *mation furnished pursuant to a request by the Secretary*
2 *for use in connection with the collection, compilation,*
3 *and analysis of employee benefit plan information and*
4 *data.".*

5 *ESTABLISHMENT OF ADVISORY COUNCIL*

6 *SEC. 506. Section 14 of such Act is amended to read*
7 *as follows:*

8 *"ADVISORY COUNCIL*

9 *"SEC. 14. (a)(1) There is hereby established an Ad-*
10 *visory Council on Employee Welfare and Pension Benefit*
11 *Plans (hereinafter referred to as the 'Council') consisting of*
12 *twenty-one members appointed by the Secretary. Not more*
13 *than eleven members of the Council shall be members of the*
14 *same political party.*

15 *"(2) Members shall be appointed from among persons*
16 *recommended by groups or organizations which they shall*
17 *represent and shall be persons qualified to appraise the pro-*
18 *grams instituted under this Act and the Retirement Income*
19 *Security for Employees Act.*

20 *"(3) Of the members appointed, five shall be repre-*
21 *sentatives of labor organizations; five shall be representatives*
22 *of management; one representative each from the fields of*
23 *insurance, corporate trust, actuarial counseling, investment*
24 *counseling, and the accounting field; and six representatives*
25 *shall be appointed from the general public, three of whom*

shall be persons representing those receiving benefits from a private pension plan.

"(4) Members shall serve for terms of three years, except that of those first appointed, six shall be appointed for terms of one year, seven shall be appointed for terms of two years, and eight shall be appointed for terms of three years. A member may be reappointed, and a member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present.

"(5) Members shall be paid compensation at the rate of $150 per day when engaged in the actual performance of their duties except that any such member who holds another office or position under the Federal Government shall serve without additional compensation. Any member shall receive travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act, and the Retirement Income Security for Employees Act and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four

1 *times each year and at such other times as the Secretary*
2 *requests. At the beginning of each regular session of the Con-*
3 *gress, the Secretary shall transmit to the Senate and House*
4 *of Representatives each recommendation which he has re-*
5 *ceived from the Council during the preceding calendar year*
6 *and a report covering his activities under the Act and the*
7 *Retirement Income Security for Employees Act for the*
8 *preceding fiscal year, including full information as to the*
9 *number of plans and their size, the results of any studies he*
10 *may have made of such plans and the operation of this Act*
11 *and the Retirement Income Security for Employees Act and*
12 *such other information and data as he may deem desirable*
13 *in connection with employee welfare and pension benefit*
14 *plans.*

15 *"(c) The Secretary shall furnish to the Council an ex-*
16 *ecutive secretary and such secretarial, clerical, and other*
17 *services as are deemed necessary to conduct its business. The*
18 *Secretary may call upon other agencies of the Government*
19 *for statistical data, reports, and other information which will*
20 *assist the Council in the performance of its duties."*

21 *ADMINISTRATION*

22 *SEC. 507. Section 5108 of title 5, United States Code,*
23 *is amended by adding at the end thereof the following new sub-*
24 *section:*

1 *"(f) In addition to the number of positions authorized*
2 *by subsection (a), the Secretary of Labor is authorized, with-*
3 *out regard to any other provision of this subsection to place a*
4 *total of 20 positions in the Department of Labor in GS-16*
5 *and 17.".*

6 *PART B—FIDUCIARY STANDARDS*

7 *Subpart I—Fiduciary Standards Under the Welfare and*
8 *Pension Plans Disclosure Act*

9 *AMENDMENT TO THE WELFARE AND PENSION PLANS*
10 *DISCLOSURE ACT*

11 *SEC. 511. The Welfare and Pension Plans Disclosure*
12 *Act is amended by redesignating sections 15, 16, 17, and*
13 *18 as sections 17, 18, 19, and 20, respectively and by in-*
14 *serting immediately after section 14 the following new*
15 *sections:*

16 *"FIDUCIARY STANDARDS*

17 *"SEC. 15. (a) Every employee benefit fund established*
18 *to provide for the payment of benefits under an employee's*
19 *benefit plan shall be established or maintained pursuant to a*
20 *duly executed written document which shall set forth the*
21 *purpose or purposes for which such fund is established and*
22 *the detailed basis on which payments are to be made into*
23 *and out of such fund. Such fund shall be deemed to be a*
24 *trust and shall be held for the exclusive purpose of (1) pro-*
25 *viding benefits to participants in the plan and their bene-*

1 *ficiaries and (2) defraying reasonable expenses of adminis-*
2 *tering the plan.*
3 *"(b)(1) A fiduciary shall discharge his duties with*
4 *respect to the fund—*
5 *"(A) with the care under the circumstances then*
6 *prevailing that a prudent man acting in a like capacity*
7 *and familiar with such matters would use in the conduct*
8 *of an enterprise of a like character and with like aims;*
9 *and*
10 *"(B) subject to the standards in subsection (a)*
11 *and in accordance with the documents and instruments*
12 *governing the fund insofar as is consistent with this Act,*
13 *except that (i) any assets of the fund remaining upon*
14 *dissolution or termination of the fund shall, after com-*
15 *plete satisfaction of the rights of all beneficiaries to*
16 *benefits accrued to the date of dissolution or termination,*
17 *be distributed ratably to the beneficiaries thereof or, if the*
18 *trust agreement so provides, to the contributors thereto;*
19 *(ii) that in the case of a registered pension or profit-*
20 *sharing-retirement plan, such distribution shall be subject*
21 *to the requirements of the Retirement Income Security*
22 *for Employees Act; and (iii) any assets of the fund,*
23 *attributable to employee contributions, remaining after*
24 *complete satisfaction of the rights of all beneficiaries*
25 *accrued to the date of dissolution or termination shall be*

1 *equitably distributed to the employee contributors accord-*
2 *ing to their rate of contribution.*
3 *"(2) A fiduciary is prohibited from engaging in the fol-*
4 *lowing transactions:*
5 *"(A) holding or purchasing on behalf of the*
6 *fund any security which has been issued by an em-*
7 *polyer or employer-group whose employees are par-*
8 *ticipants in the plan, under which the fund was estab-*
9 *lished or a corporation controlling, controlled by, or*
10 *under common control with such employer, or employee-*
11 *group, if such investment, which when added to such*
12 *securities already held, exceeds 7 per centum of the fair*
13 *market value of the assets of the fund. Notwithstanding*
14 *the foregoing, such 7 per centum limitation shall not*
15 *apply to profit sharing, stock bonus, thrift and savings*
16 *or other similar plans which explicitly provide that some*
17 *or all of the plan funds may be invested in securities*
18 *of such employer or a corporation controlling, control-*
19 *led by, or under common control with such employer,*
20 *nor shall said plans be deemed to be limited by any diver-*
21 *sification rule as to plan funds which may be invested in*
22 *such securities. Profit sharing, stock bonus, thrift, or*
23 *other similar plans, which are in existence on the date*
24 *of enactment and which allow investment in such se-*
25 *curities without explicit provision in the plan, shall*

1 *remain exempt from the 7 per centum limitation un-*
2 *til the expiration of one year from the date of enact-*
3 *ment of this section. Nothing contained in this subpara-*
4 *graph shall be construed to relieve profit-sharing, stock*
5 *bonus, thirft and savings or other similar plans from*
6 *any other applicable requirements of this section. For*
7 *the purposes of this subparagraph the leasing (or a pur-*
8 *chase in connection with such lease) of real property*
9 *and personal property related to such real property*
10 *to an employer or employer-group by a plan shall be*
11 *deemed to be a security of such employer or employer-*
12 *group;*
13 *"(B) any fund other than a profit-sharing, stock*
14 *bonus, thrift savings plan, etc., holding securities of an*
15 *employer or employer group which employs participants*
16 *in such plan, in excess of 7 per centum of the fair market*
17 *value of such fund on the effective date of this section*
18 *shall, within 5 years after the effective date of this sec-*
19 *tion, divest not less than 50 per centum of such excess*
20 *and shall, not later than 10 years after the effective date*
21 *of this section divest not less than 100 per centum of*
22 *such excess.*
23 *"(3) Except as provided in subsection (c), a fiduciary*
24 *shall not engage in a transaction with respect to a trust which*
25 *constitutes a direct or indirect—*

1 *"(A) sale or exchange, or leasing of any property*
2 *between the trust and a party in interest;*
3 *"(B) lending of money or other extension of credit*
4 *between the trust and a party in interest;*
5 *"(C) furnishing of goods, services, or facilities be-*
6 *tween the trust and a party in interest;*
7 *"(D) transfer to, or use by or for the benefit of a*
8 *party in interest of any assets of the trust;*
9 *"(E) act by a fiduciary whereby he deals in his*
10 *own interest for his own account;*
11 *"(F) receipt by a party in interest from any party*
12 *dealing with the trust in a transaction involving the*
13 *trust; or*
14 *"(G) represent any other party with such fund or*
15 *in any way act on behalf of a party adverse to the fund*
16 *or adverse to the interests of its participants or*
17 *beneficiaries.*
18 *"(4) The Secretary, in conjunction with the Secretary*
19 *of the Treasury, shall by rule or regulation provide for the*
20 *conditional or unconditional exemption of any fiduciary or*
21 *class of fiduciaries or transactions or class of transactions*
22 *from all or part of the restrictions imposed by paragraph*
23 *(3) of this subsection.*
24 *An exemption granted under this section shall not relieve a*
25 *fiduciary from any other applicable provisions of this Act.*

1 *In granting an exemption under this paragraph the Secre-*
2 *taries shall assure that such exemption is (A) administra-*
3 *tively feasible, (B) in the interests of the fund, and (C)*
4 *protective of the rights, both contingent and vested, of par-*
5 *ticipants and beneficiaries of such plan. Prior to the grant-*
6 *ing of an exemption under this paragraph, the Secretaries*
7 *shall give adequate notice which shall include publication in*
8 *the Federal Register, to interested persons, of the pendency*
9 *of such exemptions.*
10 *"(c) The prohibitions provided in subsection (b)(3)*
11 *shall not apply to—*
12 *"(1) any loan made by the trust to parties in in-*
13 *terest who are participants or beneficiaries (other than*
14 *an owner within the meaning of section 401(c)(3) of*
15 *the Internal Revenue Code of 1954 or a proprietary em-*
16 *ployee within the meaning of section 412(c)(1) of such*
17 *Code) of the plan if such loans are (i) available to all*
18 *such participants on a nondiscriminatory basis, (ii) are*
19 *not made available to highly compensated employees in*
20 *an amount greater than that amount made available to*
21 *other employees, (iii) are made in accordance with*
22 *specific provisions regarding such loans set forth in the*
23 *plan, (iv) bear a reasonable rate of interest, and (v)*
24 *are adequately secured;*

1 *"(2) a fiduciary receiving any reasonable compen-*
2 *sation for services rendered, or for the reimbursement*
3 *of expenses properly and actually incurred, in the per-*
4 *formance of his duties with the fund, or receiving in a*
5 *fiduciary capacity proceeds from any transaction involv-*
6 *ing plan funds, except that no person so serving who is*
7 *actually receiving full-time compensation from an em-*
8 *ployer or association of employers whose employees are*
9 *participants in the plan under which the fund was estab-*
10 *lished, or from an employee organization whose mem-*
11 *bers are participants in such plan shall receive compen-*
12 *sation from such fund, except for reimbursement of*
13 *expenses properly and actually incurred and not other-*
14 *wise reimbursed;*
15 *"(3) the receipt by a fiduciary or other party in*
16 *interest of any benefit to which he may be entitled as a*
17 *participant or beneficiary in the plan;*
18 *"(4) contracting or making reasonable arrange-*
19 *ments with a party in interest for office space and other*
20 *services necessary for the operation of the plan and pay-*
21 *ing reasonable compensation therefor;*
22 *"(5) following the specific instructions in the trust*
23 *instrument or other document governing the fund insofar*
24 *as consistent with the specific prohibitions listed in sub-*
25 *section (b)(3);*

1 *"(6) taking action pursuant to an authorization in*
2 *the trust instrument or other document governing the*
3 *fund, provided such action is consistent with the provi-*
4 *sions of subsection (a) or (b).*
5 *"(d) Any fiduciary who breaches any of the respon-*
6 *sibilities, obligations, or duties imposed upon fiduciaries by*
7 *this Act shall be personally liable to such fund for any losses*
8 *to the fund resulting from such breach, and to pay to such*
9 *fund any profits which have inured to such fiduciary through*
10 *use of assets of the fund.*
11 *"(e) When two or more fiduciaries undertake jointly*
12 *the performance of a duty or the excise of a power, or*
13 *where two or more fiduciaries are required by an instrument*
14 *governing the fund to undertake jointly the performance of a*
15 *duty or the exercise of power, but not otherwise, each of*
16 *such fiduciaries shall have the duty to prevent any other*
17 *such cofiduciary from committing a breach of responsi-*
18 *bility, obligation, or duty of a fiduciary or to compel such*
19 *other cofiduciary to redress such a breach, except that no*
20 *fiduciary shall be liable for any consequence of any act*
21 *or failure to act as a cofiduciary who is undertaking or is*
22 *required to undertake jointly any duty or power if he shall*
23 *object in writing to the specific action and promptly file a*
24 *copy of his objection with the Secretary.*

1 *"(f) No fiduciary may be relieved from any respon-*
2 *sibility, obligation, or duty imposed by law, by any agree-*
3 *ment, or otherwise. Nothing herein shall preclude any agree-*
4 *ment allocating specific duties or responsibilities among*
5 *fiduciaries, or bar any agreement of insurance coverage or*
6 *indemnification affecting fiduciaries subject to regulations*
7 *promulgated by the Secretary.*

8 *"(g) A fiduciary shall not be liable for a violation of*
9 *this Act committed before he became a fiduciary or after he*
10 *ceased to be a fiduciary.*

11 *"(h) No fiduciary shall permit any assets of the fund to*
12 *be held, deposited, or invested outside the United States unless*
13 *the indicia of ownership remain within the jurisdiction of a*
14 *United States District Court, except as authorized by the*
15 *Secretary by rules or regulations.*

16 *"(i) Any party in interest who participates in a trans-*
17 *action prohibited by this Act knowingly, or with reason to*
18 *know that the transaction was a transaction to which this*
19 *Act applies, shall be personally liable to make good to the*
20 *fund any losses sustained by the fund resulting from such*
21 *transaction, and to pay to the fund any profits realized by*
22 *him from such transaction.*

23 *"(j) For the purposes of this section a transfer of real*
24 *or personal property by a party in interest to a trust to which*

1 *the property is subject to a mortgage or similar lien which*
2 *the trust assumes or if it is subject to a mortgage or similar*
3 *lien which a party in interest placed on the property within*
4 *the 10-year period ending on the date of transfer.*
5 *"(k) For the purposes of this section the term 'employer-*
6 *group' means any controlled group of corporations (as de-*
7 *fined in section 1563(a) of the Internal Revenue Code of*
8 *1954) of which the employer who maintains the plan is a*
9 *member.*
10 *"(l) This section shall not apply to—*
11 *"(1) funds held by an insurance carrier unless*
12 *that carrier holds funds in a separate account,*
13 *"(2) funds held by an investment company subject*
14 *to regulation under the Investment Company Act of*
15 *1940,*
16 *"(3) a plan administered by the Government of*
17 *the United States, or by the government of a State or*
18 *political subdivision thereof, or by an agency or in-*
19 *strumentality of such a government, or*
20 *"(4) a plan established or maintained by a church*
21 *or a convention or association of churches which is ex-*
22 *empt from tax under section 501(a) of the Internal*
23 *Revenue Code of 1954, unless that plan is taxable under*
24 *chapter 45 of such Code.*

1 "PROHIBITION OF FIDUCIARY SERVICES

2 "SEC. 16. (a) No person who has been convicted of, or
3 has been imprisoned as a result of his conviction of, robbery,
4 bribery, extortion, embezzlement, grand larceny, burglary,
5 arson, a felony violation of Federal or State law involving
6 substances defined in section 102(6) of the Comprehensive
7 Drug Abuse Prevention and Control Act of 1970, murder,
8 rape, kidnaping, perjury, assault with intent to kill, assault
9 which inflicts grievous bodily injury, any crime described in
10 section 9(a)(1) of the Investment Company Act of 1940
11 (15 U.S.C. 80a-9(a)(1)), a violation of any provision
12 of this Act, a violation of section 302 of the Labor-Manage-
13 ment Relations Act of 1947 (61 Stat. 157, as amended; 29
14 U.S.C. 186), a violation of chapter 63 of title 18, United
15 States Code, a violation of section 874, 1027, 1503, 1505,
16 1506, 1510, 1951, or 1954 of title 18, United States Code,
17 a violation of the Labor-Management Reporting and Dis-
18 closure Act of 1959 (73 Stat. 519, as amended; 29 U.S.C.
19 401), or conspiracy to commit any such crimes or attempt
20 to commit any such crimes, or a crime in which any of the
21 foregoing crimes is an element, shall serve—

22 "(1) as an administrator, officer, trustee, custodian,
23 counsel, agent, employee (other than as an employee
24 performing exclusively clerical or janitorial duties), or
25 fiduciary of any employee benefit plan, or

1 *"(2) as a consultant to any employee benefit plan,*
2 *during or for five years after a conviction or after the end of*
3 *an imprisonment for any crime listed in this paragraph, unless*
4 *prior to the end of such five-year period, in the case of a*
5 *person so convicted or imprisoned, the Board of Parole of*
6 *the United States Department of Justice determines that such*
7 *person's service in any capacity referred to in subparagraph*
8 *(A) or (B) would not be contrary to the purpose of this*
9 *Act. Prior to making any such determination the Board shall*
10 *hold an administrative hearing and shall give notice of such*
11 *proceedings by certified mail to the State, county, and Fed-*
12 *eral prosecuting officials in the jurisdiction or jurisdictions*
13 *in which such person was convicted. The Board's determina-*
14 *tion in any such proceeding shall be final.*
15 *"(b) Any person who willfully violates this section, or*
16 *knowingly permits another person to violate this section,*
17 *shall be fined not more than $10,000 or imprisoned for not*
18 *more than one year, or both.*
19 *"(c) For purposes of this section—*
20 *"(1) any person shall be deemed to have been*
21 *'convicted' and under the disability of 'conviction' from*
22 *the date of the judgment of the trial court or the date*
23 *of the final sustaining of such judgment on appeal,*

1 *whichever is later, regardless of when such conviction*
2 *occurred;*
3 *"(2) the term 'imprisonment' shall not include any*
4 *period of parole; and*
5 *"(3) 'consultant' means any person who, for pe-*
6 *cuniary benefit, direct or indirect, advises or represents*
7 *an employer benefit plan, concerning the establishment*
8 *or operation of such plan.".*
9 *EFFECTIVE DATES*
10 *SEC. 512. The amendments made by part A and sub-*
11 *part I of part B of this title shall be effective January 1,*
12 *1974, except for those amendments dealing with prohibited*
13 *transactions which shall be effective January 1, 1975.*
14 ***Subpart II—Fiduciary Standards Under the Internal***
15 ***Revenue Code of 1954***
16 *SEC. 521. FIDUCIARY STANDARDS.*
17 *(a) DUPLICATION OF EFFORT.—In order to avoid un-*
18 *necessary expense and duplication of functions among Gov-*
19 *ernment agencies the Secretary of Labor and the Secretary*
20 *of the Treasury shall make arrangements or agreements*
21 *for cooperation and mutual assistance. Any information*
22 *coming to the attention of the Secretary of the Treasury in*
23 *the course of his administration of this section which may*
24 *warrant consideration for criminal prosecution under the*
25 *provisions of this section or other criminal law shall be for-*

warded to the Secretary of Labor for immediate transmittal to the Attorney General.

(b) COOPERATION WITH REGARD TO INVESTIGATIONS.—The Secretary of the Treasury shall make such arrangements as are necessary with the Secretary of Labor to preclude a duplication of effort with regard to investigations of violations relating to fiduciaries.

(c) ADMINISTRATION.—

(1) The provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to this section.

(2) The Secretary of Labor, in conjunction with the Secretary of the Treasury, shall promulgate rules and regulations for the administration and enforcement of this section with regard to prohibited transactions under section 522(d)(1).

SEC. 522. PROHIBITED TRANSACTIONS.

(a) AMENDMENT OF SECTION 503.—Section 503 (relating to requirements for exemption) is amended—

(1) by striking out "or (18)" in subsection (a)(1)(A),

(2) by striking out subsection (a)(1)(B) and by redesignating subsection (a)(1)(C) as (a)(1)(B),

(3) by striking out "or section 401(a)" in subsections (a)(2) and (c),

(4) by striking out subsections (d), (f), and (g) and redesignating subsection (e) as (d).

(b) EXCISE TAX ON PROHIBITED TRANSACTIONS.—Chapter 44 of subtitle D (relating to miscellaneous excise taxes) (as added by section 241 of this Act) is amended by adding at the end thereof the following new section:

"SEC. 4974. EXCISE TAX ON PROHIBITED TRANSACTIONS.

"(a) INITIAL TAXES ON PARTY IN INTEREST.—There is hereby imposed a tax on each prohibited transaction at the rate of 5 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any party in interest who participates in the prohibited transaction.

"(b) ADDITIONAL TAXES ON PARTY IN INTEREST.—In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this paragraph shall be paid by any party in interest who participated in the prohibited transaction.

"(c) SPECIAL RULE.—For purposes of subsections (a) and (b) if more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one

1 *prohibited transaction, all such persons shall be jointly and*
2 *severally liable under such paragraph with respect to such*
3 *act.*
4 *"(d) PROHIBITED TRANSACTION.—*
5 *"(1) GENERAL RULE.—For purposes of this sec-*
6 *tion, the term 'prohibited transaction' means a trans-*
7 *action between a party in interest and an employee's*
8 *trust described in section 401(a), a plan described in*
9 *section 404(a)(2), or a qualified individual retirement*
10 *account described in section 408(a), which is exempt*
11 *from tax under section 501(a) (or which, at any time,*
12 *has been determined by the Secretary or his delegate to*
13 *be such a trust, plan, or account) and which constitutes*
14 *a direct or indirect—*
15 *"(A) sale or exchange, or leasing of any prop-*
16 *erty between the trust and a party in interest;*
17 *"(B) lending of money or other extension of*
18 *credit between the trust and a party in interest;*
19 *"(C) furnishing of goods, services, or facilities*
20 *between the trust and a party in interest;*
21 *"(D) transfer to, or use by or for the benefit*
22 *of a party in interest of any assets of the trust;*
23 *"(E) act by a party in interest whereby he*
24 *deals with the assets of the trust in his own interest*
25 *or for his own account;*

1 *"(F) receipt of consideration from any party*
2 *in interest by any party dealing with the trust in*
3 *a transaction involving the trust.*
4 *"(2) SPECIAL RULES.—For the purposes of para-*
5 *graph (1)—*
6 *"(A) EXEMPTION.—The Secretary, in con-*
7 *junction with the Secretary of Labor shall by rule*
8 *or regulation provide for the conditional or uncon-*
9 *ditional exemption of any fiduciary or class of fi-*
10 *duciaries or transactions or class of transactions*
11 *from all or part of the restrictions imposed by para-*
12 *graph (1) of this subsection. An exemption granted*
13 *under this section shall not relieve a fiduciary from*
14 *any other applicable provisions of this Act. In grant-*
15 *ing an exemption under this paragraph, the Sec-*
16 *retaries shall assure that such exemption is (i) ad-*
17 *ministratively feasible, (ii) in the interests of the*
18 *fund, and (iii) protective of the rights, both contin-*
19 *gent and vested, of participants and beneficiaries of*
20 *such plan. Prior to the granting of an exemption*
21 *under this paragraph, the Secretaries shall give ade-*
22 *quate notice to interested persons, which shall in-*
23 *clude publication in the Federal Register, of the*
24 *pendency of such exemptions;*

1 "(B) ENCUMBERED PROPERTY. A transfer
2 of real or personal property by a party in interest to
3 a trust to which this section applies shall be treated
4 as a sale or exchange if the property is subject to a
5 mortgage or similar lien which the trust assumes or
6 if it is subject to a mortgage or similar lien which
7 a party in interest placed on the property within the
8 10-year period ending on the date of the transfer;
9 "(C) LOANS TO PARTICIPANTS.—Any loan
10 made by the trust to parties in interest who are par-
11 ticipants or beneficiaries (other than an owner em-
12 ployee within the meaning of section 401(c)(3))
13 of the qualified plan is not a prohibited transaction
14 if such loans are (i) available to all such partici-
15 pants or beneficiaries on a nondiscriminatory basis,
16 (ii) are not made available to highly compensated
17 employees in an amount greater than that amount
18 made available to other employees, (iii) are made in
19 accordance with specific provisions regarding such
20 loans set forth in the plan, (iv) bear a reasonable
21 rate of interest, and (v) are adequately secured.
22 "(D) COMPENSATION TO FIDUCIARY.—Re-
23 ceiving any reasonable compensation for service ren-
24 dered, or for the reimbursement of expenses properly

and actually incurred, in the performance of his duties with the fund, or receiving in a fiduciary capacity proceeds from any transaction involving plan funds is not a prohibited transaction except that no person so serving who is actually receiving full-time compensation from an employer or association of employers whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan, shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed.

"(E) LEASE ARRANGEMENTS BETWEEN PLANS AND EMPLOYERS OF PARTICIPANTS.—The leasing (or a purchase in connection with such lease) of real property and personal property related to such real property to an employer or emloyer-group by a pension plan shall not be a prohibited transaction if such agreements do not exceed the limitations imposed by section 15(c)(6)(A) of the Welfare and Pension Plans Disclosure Act. For the purposes of this paragraph the term 'employer-group' means any controlled group or corporation (as de-

1 *fined in section 1563(a)) of which the employer who*
2 *maintains the plan is a member.*
3 *"(F) ACTIONS IN ACCORDANCE WITH GOV-*
4 *ERNING DOCUMENT.—It is not a prohibited transac-*
5 *tion to—*
6 *"(i) contract or make reasonable arrange-*
7 *ents with a party in interest for office space*
8 *and other services necessary for the operation of*
9 *the plan and to pay reasonable compensation*
10 *therefor;*
11 *"(ii) follow specific instructions in the*
12 *trust instrument or other document governing*
13 *the fund insofar as consistent with the specific*
14 *prohibitions listed in this section; or*
15 *"(iii) take action pursuant to an authori-*
16 *zation in the trust instrument or other document*
17 *governing the fund, provided such action is*
18 *consistent with the prohibitions of this section.*
19 *"(G) FIDUCIARY OR PARTY IN INTEREST AS*
20 *PARTICIPANTS.—The receipt by a fiduciary or other*
21 *party in interest of any benefit to which he may be*
22 *entitled as a participant or beneficiary in the quali-*
23 *fied plan is not a prohibited transaction.*
24 *"(H) OTHER OFFICES.—It is not a prohibited*
25 *transaction for a fiduciary to serve as an officer, em-*

ployee, agent, or other representative of a party in interest.

"(I) EXCLUSIONS.—A qualified plan or part thereof does not include—

"(i) funds held by an insurance carrier unless that carrier holds the funds in a separate account,

"(ii) funds held by an investment company subject to regulation under the Investment Company Act of 1940,

"(iii) a plan administered by the Government of the United States, or by the government of a State or political subdivision thereof, or by an agency or instrumentality of such a government, or

"(iv) a plan established and maintained by a church or a convention or association of churches which is exempt from tax under section 501(a), unless that plan is taxable under chapter 45 (relating to certain guaranteed benefit plans).

For purposes of this subparagraph, the term 'separate account' means an account established or maintained by an insurance company under which income expenses, gains, and losses (whether or not

1 *realized) from assets allocated to such account are*
2 *credited or charged against the account in accord-*
3 *ance with the applicable contract without regard*
4 *to other income expenses, gains, or losses of the in-*
5 *surance company.*
6 *"(J) DISTRIBUTION TO EMPLOYER.—It is not*
7 *a prohibited transaction for a fiduciary to make a*
8 *distribution of the residual assets of the trust in*
9 *accordance with the terms of the plan, and not in*
10 *contravention of existing law, to the employer who*
11 *maintains the plan after all liabilities of the plan*
12 *with respect to participants and their beneficiaries*
13 *have been satisfied, except that any assets of the*
14 *fund attributable to employee contributions, remain-*
15 *ing after complete satisfaction of the rights of all*
16 *beneficiaries accrued to the date of dissolution or ter-*
17 *mination, shall be equitably distributed to the em-*
18 *ployee contributors according to their rate of con-*
19 *tribution.*
20 *"(e) FIDUCIARY AND PARTY IN INTEREST.—*
21 *"(1) PARTY IN INTEREST.—For purposes of this*
22 *section, the term 'party in interest' means, with respect*
23 *to a qualified plan, a person who is—*
24 *"(A) with respect to a particular prohibited*

1 *transaction, a fiduciary who benefits from the par-*
2 *ticular prohibited transaction;*
3 *"(B) an administrator, officer, trustee, cus-*
4 *todian, counsel of, or person providing benefit plan*
5 *services to, a qualified plan;*
6 *"(C) an employer any of whose employees are*
7 *covered by such a plan;*
8 *"(D) an employee organization any of whose*
9 *numbers are covered by such a plan;*
10 *"(E) an owner, direct or indirect, of 50*
11 *percent or more of—*
12 *"(i) the combined voting power of all*
13 *classes of stock entitled to vote or the total value*
14 *of shares of all classes of stock of a corpora-*
15 *tion,*
16 *"(ii) the capital interest or the profits in-*
17 *terest of a partnership, or*
18 *"(iii) the beneficial interest of a trust or*
19 *unincorporated enterprise,*
20 *which is an employer or an employee organization*
21 *described in subparagraph (C), (D);*
22 *"(F) a member of the family (as defined in*
23 *paragraph (5)) of any individual described in sub-*
24 *paragraph (A), (B), (C), or (E);*

1 *"(G) a corporation, partnership, or trust or*
2 *estate of which (or in which) 50 percent or more*
3 *of—*
4 *"(i) the combined voting power of all*
5 *classes of stock entitled to vote or the total value*
6 *of shares of all classes of stock of such corpora-*
7 *tion,*
8 *"(ii) the capital interest or profit-interest*
9 *of such partnership, or*
10 *"(iii) the beneficial interest of such trust*
11 *or estate,*
12 *is owned directly or indirectly, or held by persons*
13 *described in subparagraph (A), (B), (C), (D),*
14 *or (E);*
15 *"(H) a corporation which is owned in the*
16 *manner described in subparagraph (G) by a person*
17 *who is a person described in subparagraph (E);*
18 *"(I) an officer, director (or an individual hav-*
19 *ing powers or responsibilities similar to those of*
20 *officers or directors), a 10 percent or more share-*
21 *holder, or a highly compensated employee (earning*
22 *10 percent or more of the yearly wages of an em-*
23 *ployer) of a person described in subparagraph (C),*
24 *(D), (E), (G), or (H); or*

1 *"(J) a 10 percent or more (in capital or*
2 *profits) partner of a person described in subpara-*
3 *graph (C), (D), (E), (G), or (H).*
4 *"(2) FIDUCIARY.—For purposes of this section,*
5 *the term 'fiduciary' with respect to a qualified plan*
6 *means—*
7 *"(A) any person who—*
8 *"(i) exercises any power of control, man-*
9 *agement or disposition with respect to any mon-*
10 *eys or other property of a qualified plan, or*
11 *"(ii) has authority or responsibility to*
12 *exercise such powers,*
13 *If any moneys or other property of an employee benefit*
14 *fund are invested in shares of an investment company*
15 *registered under the Investment Company Act of 1940,*
16 *the investment shall not cause that investment company*
17 *or that investment company's investment adviser or prin-*
18 *cipal underwriter to be treated as a fiduciary or a party*
19 *in interest for purposes of this section, except when an*
20 *investment company or its investment adviser or princi-*
21 *pal underwriter acts in connection with an employee*
22 *benefit fund established or maintained pursuant to an*
23 *employee benefit plan covering employees of the invest-*
24 *ment company, its investment adviser, or its principal*
25 *underwriter.*

1 *"(3) STOCKHOLDINGS.—For purposes of para-*
2 *graphs (1)(E)(i), (G)(i), and (H), there shall be*
3 *taken into account indirect stockholdings which would*
4 *be taken into account under section 267(c), except that,*
5 *for purposes of this paragraph, section 267(c)(4) shall*
6 *be treated as providing that the members of the family*
7 *of an individual are the members within the meaning*
8 *of paragraph (5).*
9 *"(4) PARTNERSHIPS; TRUSTS.—For purposes of*
10 *paragraphs (1) (E) (ii) and (iii), (G) (ii) and (iii)*
11 *and (J), the ownership of profits or beneficial interests*
12 *shall be determined in accordance with the rules for con-*
13 *structive ownership of stock provided in section 267(c)*
14 *(other than paragraph (3) thereof), except that sec-*
15 *tion 267(c)(4) shall be treated as providing that the*
16 *members of the family of an individual are the members*
17 *within the meaning of paragraph (5).*
18 *"(5) MEMBER OF FAMILY.—For purposes of para-*
19 *graph (1)(F), the family of any individual shall in-*
20 *clude his spouse, ancestor, descendant, brother, sister,*
21 *son-in-law, daughter-in-law, father-in-law, mother-in-*
22 *law, brother-in-law, or sister-in-law.*
23 *"(f) OTHER DEFINITIONS.—For purposes of this*
24 *section—*

1 *"(1) TAXABLE PERIOD.—The term 'taxable period'*
2 *means, with respect to any prohibited transaction, the*
3 *period beginning with the date on which the prohibited*
4 *transaction occurs and ending on the earlier of—*
5 *"(A) the date of mailing of a notice of defi-*
6 *ciency pursuant to section 6212, with respect to the*
7 *tax imposed by subsection (a), or*
8 *"(B) the date on which correction of the pro-*
9 *hibited transaction is completed.*
10 *"(2) AMOUNT INVOLVED.—The term 'amount in-*
11 *volved' means, with respect to a prohibited transaction,*
12 *the greater of the amount of money and the fair market*
13 *value of the other property given or the amount of money*
14 *and the fair market value of the other property received;*
15 *except that, in the case of services described in subpara-*
16 *graph (d)(2) (C) or (D) the amount involved shall be*
17 *only the excess compensation. For purposes of the pre-*
18 *ceding sentence, the fair market value—*
19 *"(A) in the case of the tax imposed by sub-*
20 *section (a), shall be determined as of the date on*
21 *which the prohibited transactions occurs; and*
22 *"(B) in the case of the tax imposed by sub-*
23 *section (b), shall be the highest fair market value*
24 *during the correction period.*

1 *"(3) CORRECTION.—The terms 'correction' and*
2 *'correct' mean, with respect to a prohibited transaction,*
3 *undoing the transaction to the extent possible, but in any*
4 *case placing the plan in a financial position not worse*
5 *than that in which it would be if the prohibited trans-*
6 *action had not occurred.*

7 *"(4) CORRECTION PERIOD.—The term 'correction*
8 *period' means, with respect to a prohibited transaction*
9 *the period beginning with the date on which the pro-*
10 *hibited transaction occurs and ending 90 days after the*
11 *date of mailing of a notice of deficiency with respect*
12 *to the tax imposed by subsection (a)(i) under section*
13 *6212, extended by—*

14 *"(A) any period in which a deficiency cannot*
15 *be assessed under section 6213(a), and*

16 *"(B) any other period which the Secretary or*
17 *his delegate determines is reasonable and necessary*
18 *to bring about the correction of the prohibited trans-*
19 *action.".*

20 *(c) CLERICAL AMENDMENTS.—*

21 *(1) The table of sections for chapter 44 (relating*
22 *to qualified pension plans), which was added by section*
23 *241 of this Act, is amended by adding at the end thereof*
24 *the following new item:*

"Sec. 4974. Excise tax on prohibited transactions.".

1 *(d) Effective Date.—The amendments made by this*
2 *section shall take effect on January 1, 1975.*
3 *(c) Savings Provision.—Section 4974 of the Internal*
4 *Revenue Code of 1954 (relating to excise tax on prohibited*
5 *transactions) shall not apply to—*
6 *(1) a loan of money or other extension of credit*
7 *between a trust and a party in interest under a binding*
8 *contract in effect on August 21, 1973 (or pursuant to*
9 *renewals of such a contract) until August 22, 1983, if*
10 *such loan or other extension of credit remains at least*
11 *as favorable to the trust as an arm's-length transaction*
12 *with an unrelated party would be, and if the execution*
13 *of the contract, the making of the loan, or the extension*
14 *of credit was not, at the time of such execution, making,*
15 *or extension, a prohibited transaction (within the mean-*
16 *ing of section 503(b) or the corresponding provisions of*
17 *prior law);*
18 *(2) a lease or joint use of property involving the*
19 *trust and a party in interest pursuant to a binding con-*
20 *tract in effect on August 21, 1973 (or pursuant to*
21 *renewals of such a contract), until August 22, 1983, if*
22 *such lease or joint use remains at least as favorable to*
23 *the trust as an arm's-length transaction with an unrelated*
24 *party would be and if the execution of the contract was*

not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b)) or the corresponding provisions of prior law;

(4) the sale, exchange, or other disposition of property described in paragraph (3) between a trust and a party in interest before August 22, 1983, if—

(A) in the case of a sale, exchange, or other disposition of the property by the trust to the party in interest, the trust receives an amount which equals or exceeds the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the trust, the trust pays an amount which is not in excess of the fair market value of the property at the time of acquisition.

TITLE VI—ENFORCEMENT

PART A—DISPUTES RELATING TO THE QUALIFICATION OF CERTAIN EMPLOYEE PLANS

SEC. 601. TAX COURT PROCEDURE.

(a) In General.—Subchapter C of chapter 76 of the Internal Revenue Code of 1954 (relating to the tax court) is amended by adding at the end thereof the following new part:

1 *"PART IV—DECLARATORY JUDGMENTS RELATING*
2 *TO QUALIFICATION OF CERTAIN EMPLOYEE*
3 *PLANS*

"Sec. 7476. Declaratory judgments.
"Sec. 7477. Procedure.

4 *"SEC. 7476. DECLARATORY JUDGMENTS.*
5 *"(a) JURISDICTION.—The United States Tax Court*
6 *shall have jurisdiction under this part to hear controversies*
7 *and to enter judgments declaring whether ta plan established*
8 *by an employer for his employees is a qualified plan as de-*
9 *fined in subsection (b). Any such judgment by the Court*
10 *constitutes its decision in the proceeding and shall be review-*
11 *able in the same manner as any other decisions of the Court.*
12 *"(b) QUALIFIED PLAN DEFINED.—As used in this part,*
13 *the term 'qualified plan' means—*
14 *"(1) a pension, profit sharing, or stock bonus plan*
15 *described in section 401(a),*
16 *"(2) an annuity plan described in section 403(a),*
17 *or*
18 *"(3) a bond purchase plan described in section 405*
19 *(a).*
20 *"(c) EXHAUSTION OF ADMINISTRATIVE REMEDIES,*
21 *ETC.—The Tax Court shall not issue a declaratory judgment*
22 *under this part in any proceeding unless it determines that*
23 *the petitioner has exhausted administrative remedies avail-*

1 *able to him within the Internal Revenue Service and that the*
2 *plan with respect to which the judgment is sought has been*
3 *put into effect prior to the commencement of the proceeding*
4 *before the Tax Court. A plan shall be treated as in effect even*
5 *though it includes a provision that the funds contributed to it*
6 *may be refunded in the event the plan is found by the Sec-*
7 *retary or his delegate or by the Tax Court not to be a*
8 *qualified plan.*
9 *"(d) COMMISSIONERS.—The chief judge of the Tax*
10 *Court may assign proceedings under this part to be heard by*
11 *the commissioners of the court, and the court may authorize*
12 *a commissioner to enter the decision of the court with respect*
13 *to such proceeding, subject to such conditions and review as*
14 *the court may by rule provide.*
15 **"SEC. 7477. PROCEDURE.**
16 *"(a) RIGHT TO BRING ACTION.—*
17 *"(1) ACTIONS BROUGHT BY EMPLOYER OR*
18 *TRUSTEE; INTERVENTION BY EMPLOYEE.—An action*
19 *for a declaratory judgment under this part may be*
20 *brought by an employer who has established a pension,*
21 *profit sharing, stock bonus, annuity, or bond purchase*
22 *plan and who has submitted to the Secretary or his dele-*
23 *gate a request for a determination that the plan is a*
24 *qualified plan, that, if amended in accordance with a*
25 *proposed amendment, it will continue to be a qualified*

plan, or that termination of the plan in accordance with a proposed plan of termination will not result in the plan being treated as not a qualified plan for the plan year during which the termination occurs. If such a request was submitted by the trustee of the plan, the action for a declaratory judgment may be brought by the trustee. If the action is brought by the employer or the trustee, an employee of that employer may intervene in the proceeding if—

"(A) he intervened in the proceeding before the Internal Revenue Service relating to the requested determination, or

"(B) the employer or trustee failed to provide notice to employees of the submission of the request for a determination at, or prior to, the time at which the request was submitted to the Secretary or his delegate.

"(2) ACTIONS BROUGHT BY EMPLOYEES; INTERVENTION BY EMPLOYER.—An action for a declaratory judgment with respect to a determination obtained by an employer or by a trustee may also be brought by an individual who was an employee of the employer during the period with respect to which the judgment is sought. In any such action brought by an employee, the employer may intervene.

1 *"(b) TIME FOR BRINGING ACTION.—*

2 *"(1) 90-DAY PERIOD.—Except as provided in para-*
3 *graph (2), an action for declaratory judgment under*
4 *this part must be commenced within 90 days after the*
5 *date on which the Secretary or his delegate sends by*
6 *certified or registered mail his determination with respect*
7 *to the qualification of the plan to the person requesting*
8 *such determination.*

9 *"(2) FAILURE TO ISSUE DETERMINATIONS; EX-*
10 *TENSIONS OF TIME.—If the Secretary or his delegate*
11 *fails to issue a determination, an action for a declaratory*
12 *judgment, a requested determination with respect to the*
13 *qualification of a pension, profit sharing, stock bonus,*
14 *annuity, or bond purchase plan, or with respect to a pro-*
15 *posed amendment or termination of a qualified plan,*
16 *within 270 days after the filing with him of the request*
17 *for such determination, an action for a declaratory judg-*
18 *ment under this part may be commenced within 90 days*
19 *after the expiration of such 270-day period. If, prior to*
20 *the expiration of such 270-day period, the Secretary or*
21 *his delegate and the person requesting the determination*
22 *consent in writing to an extension of such period, the*
23 *90-day period for commencing an action shall not be-*
24 *gin to run until the expiration of the extended period*
25 *agreed to by the parties.*

"(c) Burden of Proof.—The person bringing an action for declaratory judgment under this part shall have the burden of proof with respect to any ground which was set forth in the determination by the Secretary or his delegate in such manner as to inform the person adequately of the reasons for the determination. The Secretary or his delegate shall have the burden of proof with respect to any ground on which he relies in the proceeding for a declaratory judgment and which was not set forth in his determination in such manner. If the Secretary or his delegate did not issue a determination, he shall have the burden of proof with respect to any ground on which he relies in a proceeding under this part.".

(b) Technical Amendments.—

(1) Fee for filing petition.—Section 7451 (relating to fee for filing petition) is amended by striking out "deficiency" and inserting in lieu thereof "deficiency or for a declaratory judgment under part IV of this subchapter".

(2) Date of decision.—Section 7459(c) (relating to date of decision) is amended by inserting before the period at the end of the first sentence the following: "or, in the case of a declaratory judgment proceeding under part IV of this subchapter, the date specified by the Tax Court in its decision".

1 *(3) VENUE FOR APPEAL OF DECISION.—Section*
2 *7482(b)(1) (relating to venue) is amended by add-*
3 *ing at the end thereof the following new sentence:*
4 *"In the case of a declaratory judgment of the Tax Court,*
5 *the rules of this paragraph shall be applied with respect*
6 *to the employer.".*
7 *(c) CLERICAL AMENDMENT.—The table of parts for*
8 *subchapter C of chapter 76 is amended by adding at the*
9 *end thereof the following new item:*

"Part IV. Declaratory judgments relating to qualification of certain employee plans.".

10 *(d) EFFECTIVE DATE.—The amendments made by this*
11 *section shall take effect on January 1, 1975.*

12 *PART B—AUDITING; ETC.*

13 *SEC. 641. EXCISE TAX FOR AUDITING; ETC.*
14 *(a) ANNUAL TAX ON PLAN PARTICIPATION.—Chap-*
15 *ter 44 (relating to qualified pension plans) which was added*
16 *by section 241 of this Act is amended by adding at the end*
17 *thereof the following new section:*
18 *"SEC. 4975. ANNUAL TAX ON PLAN PARTICIPATION.*
19 *"(a) GENERAL RULE.—For the calendar year begin-*
20 *ning on January 1, 1974, and each calendar year thereafter,*
21 *there is hereby imposed a tax equal to $1 per participant*
22 *under a plan established by the employer which is—*
23 *"(1) a pension, profit sharing, or stock bonus plan*
24 *described in section 401(a),*

1 *"(2) an annuity plan described in section 403(a),*
2 *or*
3 *"(3) a bond purchase plan described in section*
4 *405(a).*
5 *"(b) By Whom Paid.—The tax imposed by this sec-*
6 *tion shall be paid by the employer of such participant under*
7 *such plan.*
8 *"(c) Special Rules.—*
9 *"(1) The tax imposed by subsection (a) shall not*
10 *apply to participants under a plan established and main-*
11 *tained by the United States; a State or political sub-*
12 *division thereof; or a corporation which is an instru-*
13 *mentality of the United States, a State or political sub-*
14 *division thereof.*
15 *"(2) In the case of a plan which is established*
16 *pursuant to an agreement which the Secretary or his*
17 *delegate determines to be a collective-bargaining agree-*
18 *ment, see section 413.*
19 *"(3) For purposes of this section, a plan established*
20 *by the employer includes a plan established by a prede-*
21 *cessor of the employer.*
22 *"(d) Definition of Participant.—For purposes of*
23 *this section, the term 'participant' means an individual who*
24 *is—*

1 *"(1) actively employed by the employer at any*
2 *time during the calendar year.*
3 *"(2) entitled to make contributions to or to have*
4 *amounts contributed to or under the plan on his behalf*
5 *by the employer, and*
6 *"(3) not currently receiving benefits under the plan.*
7 *"(e) REGULATIONS.—The Secretary or his delegate*
8 *may prescribe such regulations as may be necessary to carry*
9 *out the provisions of this section.*
10 *"(f) CROSS REFERENCE.—*

"For disallowance of taxes paid under this section as a deduction, see section 275.".

11 *(b) CLERICAL AMENDMENT.—The table of sections of*
12 *chapter 44 (relating to qualified pension plans) which was*
13 *added by section 241 of this Act is amended by adding at the*
14 *end thereof the following new item:*

"Sec. 4974. Annual tax on plan participation.".

15 *(c) EFFECTIVE DATE.—The amendments made by this*
16 *section shall apply to calendar years beginning after Decem-*
17 *ber 31, 1973.*

18 *PART C—ACTUARIES*

19 *SEC. 671. ENROLLMENT AND REPORTS OF ACTUARIES.*
20 *(a) REPORTS, STATEMENTS, AND NOTICES BY ACTU-*
21 *ARIES.—Part III of chapter 61 (relating to information and*
22 *returns) is amended by inserting at the end thereof the fol-*
23 *lowing new subpart:*

1 *"Subpart E—Reports, Statements, and Notices by*
2 *Actuaries*

"Sec. 6058. Periodic report and statement of actuary.

3 *"SEC. 6058. PERIODIC REPORT AND STATEMENT OF*
4 *ACTUARY.*

5 *"(a) General Rule.—The actuarial report described*
6 *in subsection (b) shall be filed by the plan administrator (as*
7 *defined in section 3(15) of the Welfare and Pension Plans*
8 *Disclosure Act) with respect to each defined benefit plan to*
9 *which section 4971(e) does not apply, for the first plan*
10 *year for which this section applies to the plan and each third*
11 *plan year thereatfer (or more frequently if the Secretary*
12 *or his delegate determines that more frequent reports or*
13 *statements are necessary).*

14 *"(b) Actuarial Report.—The actuarial report of a*
15 *plan required by subsection (a) shall be prepared by an en-*
16 *rolled actuary (within the meaning of section 7517) and*
17 *shall contain—*

18 *"(1) a description of the plan,*

19 *"(2) a description of the funding method and actu-*
20 *arial assumptions used to determine costs under the*
21 *plan,*

22 *"(3) a certification that the funding standard ac-*
23 *count required under section 4971(b)(1) has been*

1 *maintained during the period to which the report re-*
2 *lates,*
3 *"(4) such other information regarding the plan as*
4 *the Secretary or his delegate may by regulations require,*
5 *and*
6 *"(5) a statement—*
7 *"(A) that to the best of his knowledge the re-*
8 *port is complete and accurate, and*
9 *"(B) of his opinion regarding the reasonable-*
10 *ness of the funding method and actuarial assump-*
11 *tions used to determine the normal costs of the plan.*
12 *"(c) TIME AND MANNER OF FILING.—The actuarial*
13 *report and statement required by subsection (a) shall be*
14 *filed at the time and in the manner provided by regulations*
15 *prescribed by the Secretary or his delegate."*
16 *(b) ASSESSABLE PENALTIES.—Subchapter B of chap-*
17 *ter 69 (relating to assessable penalties) is amended by add-*
18 *ing at the end thereof the following new section:*
19 *"SEC. 6692. FAILURE TO FILE ACTUARIAL NOTICE, RE-*
20 *PORT, OR STATEMENT.*
21 *"The plan administrator (as defined in section 3(15)*
22 *of the Welfare and Pension Plans Disclosure Act) of a*
23 *defined benefit plan to which section 6058 applies who fails*
24 *to file the report or statement required by that section at the*
25 *time and in the manner required by that section, shall pay*

1 *a penalty of not to exceed $1,000 for each such failure*
2 *unless it is shown that such failure is due to reasonable*
3 *cause.".*

4 *(c) ENROLLMENT OF ACTUARIES.—Chapter 77 (re-*
5 *lating to miscellaneous provisions) is amended by inserting*
6 *at the end thereof the following new section:*

7 *"SEC. 7517. ENROLLMENT OF ACTUARIES.*

8 *"The Secretary or his delegate shall, by regulations, es-*
9 *tablish reasonable standards and qualifications for persons*
10 *performing actuarial services described in section 6058 and*
11 *shall enroll persons found by the Secretary or his delegate*
12 *to satisfy such standards and qualifications. The Secretary*
13 *or his delegate may, after notice and an opportunity for a*
14 *hearing, suspend or terminate the enrollment of an actuary*
15 *under this section if the Secretary or his delegate finds that*
16 *the actuary has not satisfied requirements for enrollment.*
17 *For purposes of this title, the term 'enrolled actuary' means*
18 *a person who is enrolled by the Secretary or his delegate pur-*
19 *suant to this section."*

20 *(d) CLERICAL AMENDMENTS.—*

21 *(1) The table of subparts for part III of chapter*
22 *61 is amended by inserting at the end thereof the follow-*
23 *ing new item:*

"Subpart E—Reports, statements, and notices by actuaries.".

1 *(2) The table of sections for subchapter B of chap-*
2 *ter 68 is amended by inserting at the end thereof the*
3 *following new item:*

"Sec. 6692. Failure to file actuarial notice, report, or statement.".

4 *(3) The table of sections for chapter 77 is amended*
5 *by inserting at the end thereof the following new item:*

"Sec. 7517. Enrollment of actuaries.".

6 *(c) EFFECTIVE DATES.—*
7 *(1) The amendments made by subsections (a) and*
8 *(b) shall apply for plan years beginning on or after*
9 *January 1, 1976.*
10 *(2) The amendments made by subsections (c) and*
11 *(d) shall take effect on the date of enactment of this Act.*

12 ***PART D—ENFORCEMENT; RESOLUTION OF DIS-***
13 ***PUTES GENERALLY***

14 ***SEC. 691. ARBITRATION; CIVIL ACTIONS BY PARTICI-***
15 ***PANTS AND BENEFICIARIES.***

16 *(a) ARBITRATION PROCEDURE.—Each employee pen-*
17 *sion benefit plan subject to this part shall provide—*
18 *(1) a procedure for the fair and just review under*
19 *the plan of any dispute between the administrator of the*
20 *plan and any participant or beneficiary of the plan, and*
21 *(2) an opportunity, after such review and a deci-*
22 *sion by the administrator (or a failure to make a deci-*

1 *sion within a reasonable period of time by the adminis-*
2 *trator), for the arbitration of such disputes.*
3 *(b) Civil Actions.—A participant or beneficiary of*
4 *such a plan may bring a civil action in accordance with the*
5 *provisions of section 693 of this Act in lieu of submitting*
6 *the dispute to arbitration under the plan.*
7 *(c) Alternative Procedures.—If a dispute under a*
8 *plan is subject to procedures established by collective bar-*
9 *gaining for the resolution of such dispute, the Secretary of*
10 *Labor, upon written request by a plan administrator, may*
11 *waive the application of subsections (a), (b), and (e) to*
12 *such dispute if he determines that the procedures provided for*
13 *are reasonably fair and effective.*
14 *(d) Application of Law Relating to Section*
15 *301 of Labor Management Relations Act, 1947.—*
16 *The arbitration of disputes in accordance with the require-*
17 *ments of this section, and judicial proceedings relating there-*
18 *to, shall be governed by the laws, decisions, and rules ap-*
19 *plicable to the arbitration of disputes under section 301 of*
20 *the Labor Management Relations Act, 1947.*
21 *(e) Payment of Arbitration Costs.—The cost of*
22 *any arbitration proceedings required under this section (in-*
23 *cluding arbitrators' fees) shall be paid by the plan under*
24 *which the dispute arises, unless the arbitrator determines*

1 *that a participant's or beneficiary's allegations are frivolous*
2 *and assesses all or a portion of such cost to that party.*
3 *(f) INFORMATION AND ASSISTANCE.—The Secretary*
4 *shall inform participants and their beneficiaries under*
5 *plans to which this part applies of their rights under this*
6 *part. The Secretary is authorized to furnish assistance to*
7 *such participants and their beneficiaries in obtaining such*
8 *rights.*
9 *(g) The Secretary shall prescribe rules and regula-*
10 *tions necessary to carry out this section.*
11 ***SEC. 692. CIVIL ACTIONS BY SECRETARY OF LABOR.***
12 *Whenever the Secretary believes that an employees' bene-*
13 *fit fund is being or has been administered in violation of the*
14 *requirements of the Welfare and Pension Plans Disclosure*
15 *Act and the Retirement Income Security for Employees Act*
16 *or the documents governing the establishment or operation of*
17 *the fund, the Secretary may petition any district court of*
18 *the United States having jurisdiction of the parties or the*
19 *United States District Court for the District of Columbia*
20 *for an order (1) requiring return to such fund of assets*
21 *transferred from such fund in violation of the requirements*
22 *of such Act, (2) requiring payment of benefits denied to any*
23 *participant or beneficiary due to violation of the require-*
24 *ments of such Act, or of the requirements of this Act and the*
25 *Retirement Income Security for Employees Act, and (3)*

1 *restraining any conduct in violation of the fiduciary re-*
2 *quirements of such Act, or of this Act, and granting such*
3 *other relief as may be appropriate to effectuate the purposes*
4 *of this Act, including but not limited to, removal of a*
5 *fiduciary who has failed to carry out his duties and the*
6 *removal of any person who is serving in violation of the*
7 *requirements of section 16(h) of the Welfare and Pension*
8 *Plans Disclosure Act and the Retirement Income Security*
9 *for Employees Act.*

10 ***SEC. 693. ACTIONS TO REDRESS OR RESTRAIN VIOLA-***
11 ***TIONS OF FIDUCIARY DUTY.***

12 *Civil actions for appropriate relief, legal or equitable,*
13 *to redress or restrain a breach of any responsibility, obliga-*
14 *tion, or duty of a fiduciary, including but not limited to, the*
15 *removal of a fiduciary who has failed to carry out his duties*
16 *and the removal of any person who is serving in violation of*
17 *the requirements of section 15(h) of the Welfare and Pension*
18 *Plans Disclosure Act or against any person who has trans-*
19 *ferred or received any of the assets of a plan or fund in*
20 *violation of the fiduciary requirements of the Welfare and*
21 *Pension Plans Disclosure Act or in violation of the docu-*
22 *ment or documents governing the establishment or operation*
23 *of the fund, may be brought by any participant or bene-*
24 *ficiary of any employee benefit plan or fund subject to the*
25 *Welfare and Pension Plans Disclosure Act in any court of*

1 *competent jurisdiction, State or Federal, or the United States*
2 *District Court for the District of Columbia, without respect*
3 *to the amount in controversy and without regard to the citi-*
4 *zenship of the parties. Where such action is brought in a dis-*
5 *trict court of the United States, it may be brought in the*
6 *district where the plan is administered, where the breach took*
7 *place, or where a defendant resides or may be found, and*
8 *process may be served in any other district where a defend-*
9 *ant resides or may be found. Such actions may also be*
10 *brought by a participant or beneficiary as a representative*
11 *party on behalf of all participants or beneficiaries similarly*
12 *situated. In all civil actions authorized by this Act or the*
13 *Welfare and Pension Plans Disclosure Act, attorneys ap-*
14 *pointed by the Secretary shall represent the Secretary except*
15 *as provided in section 518(a) of title 28, United States*
16 *Code (relating to litigation before the Supreme Court of the*
17 *United States).*
18 *SEC. 694. JURISDICTION OF COURTS.*
19 *Suits by a participant or beneficiary for benefits from*
20 *an employee benefit plan or fund, subject to the Welfare and*
21 *Pension Plans Disclosure Act, may be brought in any court*
22 *of competent jurisdiction, State or Federal, or the United*
23 *States District Court for the District of Columbia, without*
24 *respect to the amount in controversy and without regard to*
25 *the citizenship of the parties, against any such plan or fund*

1 *to recover benefits due him required to be paid from such*
2 *plan or fund pursuant to the document or documents govern-*
3 *ing the establishment or operation of the plan or fund, or to*
4 *clarify his rights to future benefits under the terms of the*
5 *plan. Where such action is brought in a district court of the*
6 *United States, it may be brought in the district where the*
7 *plan is administered, or where a defendant resides or may*
8 *be found, and process may be served in any other district*
9 *where a defendant resides or may be found. Such actions may*
10 *also be brought by a participant or beneficiary as a rep-*
11 *resentative party on behalf of all participants or beneficiaries*
12 *similarly situated.*

13 ***SEC. 695. PROCEDURE.***

14 *(a) SERVICE.—The jurisdiction of any court competent*
15 *to hear an action brought by a participant or beneficiary*
16 *under section 693 or 694 shall be conditioned upon the*
17 *service of a copy of the complaint upon the Secretary by*
18 *certified mail, who shall have the right in his discretion to*
19 *intervene in the action.*

20 *(b) REMOVAL.—Notwithstanding any other law, the Sec-*
21 *retary shall have the right to remove an action brought*
22 *under section 693 or 694 from a State court to a district*
23 *court of the United States, if the action is one seeking relief*
24 *of the kind the Secretary is authorized to sue for under this*
25 *Act. Any such removal shall be prior to the trial of the action*

1 *and shall be to a district court where the Secretary could*
2 *have initiated the action.*
3 ***SEC. 696. APPLICATION OF ACT OF MARCH 23, 1932.***
4 *The provisions of the Act entitled "An Act to amend the*
5 *Judicial Code and to define and limit the jurisdiction of*
6 *courts sitting in equity, and for other purposes", approved*
7 *March 23, 1932, shall not be applicable with respect to suits*
8 *brought under this title.*
9 ***SEC. 697. ACTIONS BROUGHT BY ADMINISTRATOR OR***
10 ***FIDUCIARY AGAINST SECRETARY.***
11 *Suits by an administrator or fiduciary of an employee*
12 *benefit plan subject to this Act or the Welfare and Pension*
13 *Plans Disclosure Act, to review a final order of the Secre-*
14 *tary, to restrain the Secretary from taking any action con-*
15 *trary to the provisions of such Acts, or to compel action re-*
16 *quired under this Act, may be brought in the name of the*
17 *plan or fund in the district court of the United States*
18 *for the district where the fund has its principal office, or in*
19 *the United States District Court for the District of Columbia.*
20 ***SEC. 698. STATUTE OF LIMITATIONS.***
21 *Any action, suit, or proceeding based upon a violation of*
22 *this Act or the Welfare and Pension Plans Disclosure Act*
23 *shall be commenced within five years after the violation oc-*
24 *curs. In the case of fraud or concealment, such action, suit,*

or proceeding shall be commenced within five years of the date of discovery of such violation.

SEC. 699. RELATIONSHIP TO STATE LAWS.

(a) PRE-EMPTION OF STATE LAWS.—It is hereby declared to be the express intent of Congress that, except for actions authorized by section 694 of this title, the provisions of this Act or the Welfare and Pension Plans Disclosure Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the subject matters regulated by this Act or the Welfare and Pension Plans Disclosure Act, except that nothing herein shall be construed—

(1) to exempt or relieve any employee benefit plan not subject to this Act or the Welfare and Pension Plans Disclosure Act from any law of any State;

(2) to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary; or

(3) to alter, amend, modify, invalidate, impair, or supersede any law of the United States other than the Welfare and Pension Plans Disclosure Act or any rule or regulation issued under any law except as specifically provided in this Act.

1 *(b) Jurisdiction of State Courts.—Subsection*
2 *(a) of this section shall not be deemed to prevent any State*
3 *court from asserting jurisdiction in any action requiring or*
4 *permitting an accounting by a fiduciary during the operation*
5 *of an employee benefit fund subject to the Welfare and*
6 *Pension Plans Disclosure Act or upon the termination thereof*
7 *or from asserting jurisdiction in any action by a fiduciary*
8 *requesting instructions from the court or seeking an inter-*
9 *pretation of the trust instrument or other document govern-*
10 *ing the fund. In any such action—*
11 *(1) the provisions of this Act and the Welfare and*
12 *Pension Plans Disclosure Act shall supersede any and*
13 *all laws of the State and of political subdivisions thereof,*
14 *insofar as they may now or hereafter relate to the fiduci-*
15 *ary, reporting, and disclosure responsibilities of persons*
16 *acting for or on behalf of employee benefit plans or on*
17 *behalf of employee benefit funds subject to the Welfare*
18 *and Pension Plans Disclosure Act except insofar as they*
19 *may relate to the amount of benefits due beneficiaries*
20 *under the terms of the plan;*
21 *(2) notwithstanding any other law, the Secretary*
22 *or, in the absence of action by the Secretary, a partici-*
23 *pant or beneficiary of the employee benefit plan or fund*

1 *affected by this subsection, shall have the right to remove*
2 *such action from a State court to a district court of*
3 *the United States if the action involves an interpretation*
4 *of the fiduciary, or reporting, and disclosure responsi-*
5 *bilities of persons acting on behalf of employee benefit*
6 *plans subject to the Welfare and Pension Plans Dis-*
7 *closure Act;*
8 *(3) the jurisdiction of the State court shall be con-*
9 *ditioned upon—*
10 *(A) written notification, sent to the Secretary*
11 *by certified mail at the time such action is filed,*
12 *identifying the parties to the action, the nature of*
13 *the action, and the plan involved; and satisfactory*
14 *evidence presented to the court that the participants*
15 *and beneficiaries have been adequately notified with*
16 *respect to the action; and*
17 *(B) the right of the Secretary or of a partici-*
18 *pant or beneficiary to intervene in the action as an*
19 *interested party.*
20 *SEC. 699A. RECRIMINATION AGAINST EMPLOYEES AND*
21 *OTHER PERSONS.*
22 *It shall be unlawful for any person to discharge, fine,*
23 *suspend, expel, discipline, or discriminate against a partici-*

1 *pant or beneficiary for exercising any right to which he is*
2 *entitled under the provisions of the plan, this Act, or the*
3 *Welfare and Pension Plans Disclosure Act, or for the*
4 *purpose of interfering with the attainment of any right to*
5 *which such participant may become entitled under the plan,*
6 *this Act, or the Welfare and Pension Plans Disclosure Act. It*
7 *shall be unlawful for any person to discharge, fine, suspend,*
8 *expel, or discriminate against any person because he has*
9 *given information or has testified or is about to testify in*
10 *any inquiry or proceeding relating to this Act or the Wel-*
11 *fare and Pension Plans Disclosure Act. The provisions of*
12 *sections 692 and 693 shall be applicable in the enforcement*
13 *of this section.*

14 ***SEC. 699B. INTERFERENCE WITH RIGHTS.***

15 *It shall be unlawful for any person through the use of*
16 *fraud, force, violence, or threat of the use of force or violence,*
17 *to restrain, coerce, intimidate, or attempt to restrain, coerce,*
18 *or intimidate any participant or beneficiary for the purpose*
19 *of interfering with or preventing the exercise of any right to*
20 *which he is or may become entitled under the plan, this Act,*
21 *or the Welfare and Pension Plans Disclosure Act. Any per-*
22 *son who willfully violates this section shall be fined $10,000*
23 *or imprisoned for not more than one year, or both.*

TITLE VII—RETIREMENT SAVINGS; LIMITATION ON PROPRIETARY EMPLOYEE CONTRIBUTIONS; TAXATION OF CERTAIN LUMP-SUM DISTRIBUTIONS

SEC. 701. DEDUCTION FOR RETIREMENT SAVINGS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 219 as 220 and inserting after section 218 the following new section:

"SEC. 219. RETIREMENT SAVINGS.

"(a) DEDUCTION ALLOWED.—Subject to the limitations imposed by subsections (b) and (c), in the case of an individual, there shall be allowed as a deduction amounts paid in money during the taxable year by such individual for his benefit—

"(1) to or under a qualified individual retirement account described in section 408(a) which is exempt from tax under section 501(a), or

"(2) for a qualified individual retirement bond purchase described in section 409, unless the bond is redeemed within 12 months after its issuance and no in-

terest is payable on account of the application of section 409(b)(1)(D)(iii).

"(b) LIMITATIONS.—

"(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), the amount allowable as a deduction under subsection (a) to an individual for any taxable year shall not be less than the lesser of his earned income paid or accrued for such taxable year up to a deduction of $1,000, nor more than 15 per centum of his earned income paid or accrued for such taxable year, up to a deduction of $1,500.

"(2) PARTICIPATION IN CERTAIN OTHER PLANS.—No deduction shall be allowed under this section for the individual's taxable year if, at any time during such taxable year, he is an active participant in—

"(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

"(B) a plan which meets the requirements of section 404(a)(2),

"(C) a qualified bond purchase plan described in section 405(a),

"(D) an annuity plan described in section 403(b), or

1 *"(E) a plan established and maintained by*
2 *the United States, a State or political subdivision*
3 *thereof, or a corporation which is an instrumen-*
4 *tality of the United States, a State, or a political*
5 *subdivision of a State.*
6 *"(3) REDUCTION FOR CERTAIN EMPLOYER AC-*
7 *COUNTS.—If an individual is a participant in an ac-*
8 *count described in section 408(a)(8) for the taxable*
9 *year, the amount of the limitation otherwise determined*
10 *under paragraph (1) of this subsection for such year*
11 *shall be reduced by an amount equal to the employer*
12 *contributions to such account for such year. If an indi-*
13 *vidual is a participant in such an account for less*
14 *than his entire taxable year, the amount of the deduc-*
15 *tion allowable under this section to him for such year*
16 *shall be reduced by the sum of any amounts allowed*
17 *as a deduction to the individual for his contributions to*
18 *such account, and the amount of the reduction deter-*
19 *mined under this paragraph.*
20 *"(4) CONTRIBUTIONS MADE AFTER AGE 70½*
21 *YEARS.—No deduction shall be allowed under this sec-*
22 *tion with respect to any payment described in subsec-*
23 *tion (a) which is made by an individual who attains*
24 *the age of 70½ years before the end of the taxable year*
25 *of such payment.*

1 *"(c) Recontributed Amounts.—No deduction shall*
2 *be allowed under this section with respect to a contribution*
3 *to which section 72(p)(2)(C) applies.*
4 *"(d) Married Individuals.—In the case of a married*
5 *individual (as defined in section 153), the amount deter-*
6 *mined under subsection (b)(1) shall be determined without*
7 *regard to the earned income of his spouse. For purposes of*
8 *this section, the earned income of, and payments by, a mar-*
9 *ried individual shall be determined without regard to the*
10 *community property laws of a State.*
11 *"(e) Earned Income Defined.—For purposes of this*
12 *section, the term 'earned income' means any income which*
13 *is earned income within the meaning of section 401(c)(2)*
14 *or 911(b)."*
15 *(b) Individual Retirement Accounts.—Subpart*
16 *A of part I of subchapter D of chapter 1 (relating to general*
17 *rules) is amended by adding at the end thereof the following*
18 *new section:*
19 *"SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.*
20 *"(a) Requirements for Qualification.—A trust*
21 *created or organized in the United States shall constitute a*
22 *qualified individual retirement account under this section*
23 *provided that under a written governing instrument—*
24 *"(1) it is maintained for the purpose of distributing*

1 *the contributions thereto and the income therefrom to*
2 *a specific individual or his beneficiaries;*
3 *"(2) except in the case of a contribution to which*
4 *section 72(p)(2)(C) applies, contributions thereto*
5 *during any taxable year may not exceed the excess of—*
6 *"(A) the limitation provided by section 219*
7 *(b) (plus any amounts contributed by an employer*
8 *to an account described in paragraph (8) for such*
9 *taxable year), over*
10 *"(B) the sum of the amounts paid by such*
11 *individual during such year—*
12 *"(i) for a qualified individual retirement*
13 *bond purchase described in section 409, for his*
14 *benefit, or*
15 *"(ii) under another qualified individual*
16 *retirement account,*
17 *and, except as provided in subsection (b)(3), may be*
18 *made only by the individual for whose benefit the ac-*
19 *count is maintained;*
20 *"(3) the assets thereof may not be commingled with*
21 *other property except in a common trust fund or in the*
22 *case of accounts maintained by an employer for his*
23 *employees;*
24 *"(4) the assets thereof are required to be held by*
25 *a bank (as defined in section 401(d)(1)) or other per-*

son who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which such other person will hold such assets will be consistent with the requirements of this section;

"(5) the entire interest of the individual for whose benefit the account is maintained will be distributed to him not later than his taxable year in which he attains the age 70½ years, or will be distributed, commencing not later than such taxable year, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such individual or the lives of such individual and his spouse, or

"(B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse;

"(6) if the individual for whose benefit the account is maintained dies before his entire interest has been distributed to him, or if distribution has been commenced in accordance with paragraph (5) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such surviving spouse, the entire interest (or the remaining part of such interest if distribution thereof has commended) will, within 5 years after his death (or the death of his surviving spouse), be distributed, or applied to the pur-

chase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which will be immediately distributed to such beneficiary or beneficiaries;

"(7) if contributions thereto may be used for the purchase of an annuity or similar contract issued by a life insurance company, any refunds of premiums are applied within the current taxable year or next succeeding taxable year toward the payment of future premiums or the purchase of additional benefits; and

"(8) in the case of an account to which an employer contributes the additional requirements of subsection (b)(3) are met.

For purposes of this title, a custodial account, annuity contract, or other similar arrangement shall be treated as a trust constituting a qualified individual retirement account of such arrangement would, except for the fact that it is not a trust, constitute a qualified individual retirement account under this subsection. Paragraph (6) shall not apply if distribution of the interest of such individuals have commenced and such distribution is for a term certain over a period permitted under paragraph (5).

1 "(b) SPECIAL RULES.—

2 "(1) EXCESS CONTRIBUTIONS.—If all or a por-
3 tion of the contributions paid by an individual during
4 any taxable year to a qualified individual retirement
5 account are not deductible under section 219 (other
6 than by reason of section 219(c)), such contributions
7 or portions thereof shall be treated in the same manner
8 as an excess contribution within the meaning of sec-
9 tion 401(e)(1), and, for this purpose, section 401(e)
10 (2) and (3) shall apply as if such individual were an
11 owner-employee.

12 "(2) COMMUNITY PROPERTY LAWS.—This section
13 shall be applied without regard to the community prop-
14 erty laws of any State.

15 "(3) EMPLOYER CONTRIBUTIONS.—An employer
16 may maintain and may contribute to qualified individual
17 retirement accounts for his employees if, with respect
18 to each employee's account for such employee's taxable
19 year—

20 "(A) the employee is not an active participant
21 in another trust or plan of such employer which is
22 qualified under section 401(a), 404(a)(2), or
23 405(a),

24 "(B) the aggregate employer and employee

1 *contributions with respect to such account do not*
2 *exceed $1,000,*
3 *"(C) the interest of such employee in such*
4 *account is nonforfeitable, and*
5 *"(D) separate records are maintained for em-*
6 *ployer and employee contributions.*
7 *An account described in this paragraph shall satisfy the*
8 *requirements of subsection (a) with respect to each indi-*
9 *vidual who participates and shall be treated as such in-*
10 *dividual's separate account, except that the employer*
11 *may pay reasonable administrative expenses. In deter-*
12 *mining the deductibility of employer contributions sat-*
13 *isfying the requirements of this paragraph, the limita-*
14 *tions under section 404 shall not apply; however, any*
15 *amount contributed by an employer to such an account*
16 *during the employee's taxable year for whom the account*
17 *is maintained in excess of the limitation contained in sub-*
18 *paragraph (C) shall not be deductible, but shall be with-*
19 *drawn from the account by the employer before the end*
20 *of the taxable year of the employer during which it was*
21 *made, or carried over to the succeeding taxable year of*
22 *the employer, during which year it shall be deductible to*
23 *the extent that a contribution during that year of such*
24 *excess amount is deductible. Contributions made by an*

1 *employer to such an account shall be taxable to the*
2 *participant only as provided by this section.*
3 *"(4) TRANSFER OF ACCOUNT INCIDENT TO*
4 *DIVORCE.—The transfer of an individual's interest in a*
5 *qualified individual retirement account to his former*
6 *spouse under a divorce decree or under a written instru-*
7 *ment incident to such divorce shall be deemed not to be a*
8 *taxable transfer by such individual notwithstanding any*
9 *other provision of this subtitle, and such interest at the*
10 *time of the transfer shall be deemed to be a qualified*
11 *individual retirement account of such spouse, and not*
12 *of such individual. The basis of such account to such*
13 *spouse at such time shall be deemed to be the same as the*
14 *individual's basis at such time. Thereafter such account*
15 *for purposes of this subtitle shall be treated as maintained*
16 *for the benefit of such spouse.*
17 *"(c) TREATMENT AS QUALIFIED TRUST BENEFITING*
18 *OWNER-EMPLOYEE.—Solely for purposes of subchapter F,*
19 *chapter 44, and subtitle F, a qualified individual retirement*
20 *account shall be treated as a trust described in section 401(a)*
21 *which is part of a plan providing contributions or benefits*
22 *for employees some or all of whom are owner-employees*
23 *(as defined in section 401(c)(3)), the individual for whose*
24 *benefit such account is maintained shall be treated as an*
25 *owner-employee for whom such contributions or benefits are*

1 *provided, and the person holding the assets of such qualified*
2 *individual retirement account shall be treated as the trustee*
3 *of such trust. If section 72(p)(2)(C) applies to a contri-*
4 *bution to a qualified individual retirement account, chapter*
5 *44 shall not be applied to such contribution.*

6 *"(d) TAXABILITY OF BENEFICIARY OF QUALIFIED*
7 *INDIVIDUAL RETIREMENT ACCOUNT.—*

8 *"(1) IN GENERAL.—Except as provided in para-*
9 *graphs (2) and (3), the amount actually paid, dis-*
10 *tributed, or made available to any payee or distributee*
11 *by a qualified individual retirement account shall be*
12 *taxable to him in the year in which actually paid or*
13 *distributed under section 72 (relating to annuities).*

14 *"(2) RECONTRIBUTED AMOUNTS.—Amounts paid*
15 *or distributed by a qualified individual retirement ac-*
16 *count (except amounts distributed pursuant to provi-*
17 *sions of the governing instrument, and meeting the*
18 *requirements of subsection (a)(5)) shall not be includ-*
19 *ible in gross income in the year paid or distributed to*
20 *the extent that such amounts are not subject to the tax*
21 *imposed by section 72(p)(3) by reason of the applica-*
22 *tion of section 72(p)(2)(C).*

23 *"(3) APPLICABILITY OF SECTION 72(m).—Under*
24 *regulations prescribed by the Secretary or his delegate,*
25 *an individual who establishes a qualified individual re-*

1 *tirement account shall be treated as an employee who is*
2 *an owner-employee for purposes of applying paragraphs*
3 *(2) and (4) of section 72(m) (relating to special*
4 *rules applicable to employee annuities and distributions*
5 *under employee plans).*

6 *"(e) TREATMENT OF NONQUALIFIED OR NONEXEMPT*
7 *ACCOUNT.—If for the preceding taxable year of a trust it*
8 *was described in subsection (a) and was exempt from tax*
9 *under section 501(a) and if for the taxable year such trust*
10 *is not exempt from tax under section 501(a), the fair*
11 *market value of the account at the beginning of the tax-*
12 *able year, reduced by any contributions of the individual*
13 *who established such account which were not deductible*
14 *under section 219 (other than by reason of section 219(c)),*
15 *shall be included in the gross income of the individual who*
16 *established such account or his beneficiary as if the assets*
17 *of the trust had been distributed to him on the first day of*
18 *the taxable year.*

19 *"(f) SPECIAL RULE.—Solely for the purpose of deter-*
20 *mining whether section 72(p)(2)(C) applies to a contri-*
21 *bution under subsection (a)(2) or to an amount paid or*
22 *distributed under subsection (d)(2), the requirement of*
23 *section 72(p)(1) that the amount paid or distributed be*
24 *received before age 59½ shall not apply.*

25 *"(g) CROSS REFERENCES.—*

"(1) For excise tax on a qualified individual retirement account, see section 4960.

"(2) For additional tax on certain distributions from a qualified individual retirement account, see section 72(p)."

1 *(c) Treatment of Distributions From Indi-*
2 *vidual Retirement Accounts.—Section 72 (relating to*
3 *annuities) is amended—*
4 *(1) by striking out subsection (m)(1),*
5 *(2) by inserting after "section 401(c)(1)" in sub-*
6 *section (m)(2) ", or under section 219",*
7 *(3) by striking out at the end of subsection (m)*
8 *(3)(A)(i) "or",*
9 *(4) by striking out at the end of subsection (m)*
10 *(3)(A)(ii) "participant." and inserting in lieu thereof*
11 *"participant, or",*
12 *(5) by inserting after subsection (m)(3)(A)(ii)*
13 *the following new clause—*
14 *"(iii) purchased by a trust described in*
15 *section 408(a) which is exempt from tax under*
16 *section 501(a).",*
17 *(6) by striking out subsection (m)(3)(B) and*
18 *inserting in lieu thereof:*
19 *"(B) Any contribution to a plan described in*
20 *subparagraph (A)(i) or a trust described in sub-*
21 *paragraph (A) (ii) or (iii), which is allowed as a*
22 *deduction under section 404 or section 219, and any*
23 *income of a trust described in subparagraph (A)*

(ii) or (iii), which is determined in accordance with regulations prescribed by the Secretary or his delegate to have been applied to purchase the life insurance protection under a contract described in subparagraph (A), is includible in the gross income of the participant for the taxable year when so applied.",

(7) by inserting after "501(a)" in subsection (m)(4)(A) ", a trust described in section 408(a) which is exempt from tax under section 501(a),",

(8) by inserting after "501(a)" in subsection (m)(4)(B) ", a trust described in section 408(a) which is exempt from tax under section 501(a),", and

(9) by redesignating subsection (p) as (q) and inserting after subsection (o) the following new subsection:

"(p) TREATMENT OF CERTAIN PREMATURE DISTRIBUTIONS.—

"(1) APPLICATION OF SUBSECTION.—This subsection shall apply to amounts paid or distributed by a qualified individual retirement account described in section 408(a) which is exempt from tax under section 501(a), which are includible in the gross income of the distributee or payee and which are received by

1 *him before the individual for whose benefit such account*
2 *is maintained attains the age of 59½ years.*
3 *"(2) LIMITATIONS.—This subsection shall not ap-*
4 *ply to an amount described in paragraph (1)—*
5 *"(A) paid or distributed to such individual*
6 *on account of his becoming disabled within the*
7 *meaning of subsection (m)(7),*
8 *"(B) includible in gross income under section*
9 *72(m)(3)(B), or*
10 *"(C) paid or distributed by a qualified indi-*
11 *vidual retirement account to the individual for whose*
12 *benefit such account is maintained if, within 60*
13 *days after receipt, such amount is contributed in*
14 *full to another qualified individual retirement ac-*
15 *count for such individual's benefit.*
16 *Subparagraph (C) shall not apply to an amount de-*
17 *scribed in paragraph (1) which is paid or distributed*
18 *to an individual with respect to whom such subpara-*
19 *graph applied at any time during the preceding, 36-*
20 *month period, nor shall it apply unless the same prop-*
21 *erty (other than money) received in such payment or*
22 *distribution is contributed to such other qualified indi-*
23 *vidual retirement account for such individual's benefit.*
24 *"(3) AMOUNT OF PENALTY.—If an individual is*
25 *required to include in gross income for the taxable year*

1 *an amount to which this subsection applies, there shall*
2 *be imposed, in addition to any other tax imposed by*
3 *this chapter, a tax for such taxable year equal to 30*
4 *percent of such amount. The tax imposed under this*
5 *paragraph shall not be reduced by any credit under*
6 *part IV of subchapter A and shall not be treated as a*
7 *tax imposed by this chapter for purposes of section 56.".*
8 *(d) Excise Tax on Excessive Accumulations.—*
9 *Subtitle D (relating to miscellaneous excise taxes) is*
10 *amended by adding at the end thereof the following new*
11 *chapter:*

12 ***"CHAPTER 43.—RETIREMENT PLANS***

"Sec. 4960. Excise tax on individual retirement accounts.

13 ***"SEC 4960. EXCISE TAX ON INDIVIDUAL RETIREMENT***
14 ***ACCOUNTS.***

15 *"(a) Imposition of Tax.—There is hereby imposed*
16 *for each taxable year on the assets of a qualified individual re-*
17 *tirement account described in section 408(a) which is exempt*
18 *from tax under section 501(a) a tax equal to 10 percent*
19 *of an amount which bears the same ratio to the fair market*
20 *value of the total assets in such account at the beginning of*
21 *the taxable year as—*
22 *"(1) the minimum amount required to be distributed*
23 *during such year under section 408(a) (5) or (6)*
24 *(whichever applies), reduced (but not below zero) by*

the total amount actually distributed during such year by the account to the individual for whose benefit such account is maintained or his beneficiary, bears to—

"(2) the minimum amount required to be distributed during such year under section 408(a) (5) or (6) (whichever applies).

"(b) WHEN APPLICABLE.—The tax imposed by this section shall apply only for taxable years beginning after the taxable year in which the individual who established such account attains the age of 70½ years.

"(c) RULES.—For purposes of this section, the minimum amount required to be distributed during a year under section 408(a) (5) or (6) shall be determined under regulations prescribed by the Secretary or his delegate. In the case of an account described in section 408(a)(8) the tax shall be computed only with respect to each individual in such account. A bond described in section 409, with respect to which a deduction was claimed under section 219, shall be treated, for purposes of this section, as a qualified individual retirement account."

(e) LIMITATION ON APPLICATION OF SECTIONS 402 (a) AND 403(a) IN THE CASE OF CERTAIN CONTRIBUTIONS.—Subpart A of Part I of subchapter D of chapter 1 (relating to general rules) is amended as follows:

1 *(1) Amendment of section 402.—Section 402*
2 *(a) (relating to taxability of beneficiary of exempt*
3 *trust) is amended—*
4 *(A) by striking out in the first sentence of*
5 *paragraph (1) "and (4)" and inserting in lieu*
6 *thereof ", (4), and (6)", and*
7 *(B) by inserting after paragraph (5) the fol-*
8 *lowing new paragraph—*
9 *"(6) Individual retirement accounts.—In*
10 *the case of an employees' trust described in section 401*
11 *(a), which is exempt from tax under section 501(a),*
12 *if the total distributions payable with respect to any*
13 *employee are paid to him within 1 taxable year of the*
14 *employee (during which he is not at any time 59½ years*
15 *of age or older) on account of his separation from the*
16 *service other than by reason of his death, the amount of*
17 *such distribution, to the extent such distribution would be*
18 *includible in gross income but for the provisions of this*
19 *paragraph, shall not be includible in gross income in the*
20 *year paid if, no later than the 60th day after the close of*
21 *the taxable year in which such amount was paid to him,*
22 *such otherwise includible amount is contributed by him*
23 *in full to one or more qualified individual retirement*
24 *accounts described in section 408(a). This paragraph*

shall not apply unless the same property (other than money) received in the total distribution is contributed.

(2) AMENDMENT OF SECTION 403.—Section 403(a) is amended—

(A) by striking out in the first sentence of paragraph (1) "paragraph (2)" and inserting in lieu thereof "paragraphs (2), and (4)", and

(B) by inserting after paragraph (3) the following new paragraph—

"(4) INDIVIDUAL RETIREMENT ACCOUNTS.—If—

"(A) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

"(B) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

"(C) the total amounts payable by reason of an employee's separation from the service other than by reason of death are paid to the employee within one taxable year of the employee (during which he is not at any time 59½ years of age or older),

then the amount of such payments, to the extent such amounts would be includible in gross income but for the

provisions of this paragraph, shall not be includible in gross income in the year paid if, no later than the 60th day after the close of the taxable year in which such amounts are paid to him, such otherwise includible amounts are contributed by him in full to one or more qualified individual retirement accounts described in section 408(a). This paragraph shall not apply unless the same property (other than money) received in such payments is contributed. The Secretary or his delegate shall prescribe such regulations as he may deem necessary to carry out the purposes of this paragraph."

(f) INDIVIDUAL RETIREMENT BOND PURCHASE.—Subpart A of Part I of subchapter D of chapter 1 (relating to general rules) is amended by adding at the end thereof the following new section:

"SEC. 409. INDIVIDUAL RETIREMENT BOND PURCHASES.

"(a) REQUIREMENT FOR QUALIFICATION.—An individual's purchase of United States bonds described in subsection (b) shall constitute a qualified individual retirement bond purchase under this section if contributions (not in excess of an amount determined under section 219) are used solely to purchase for the individual or his beneficiaries United States bonds described in subsection (b).

"(b) BONDS TO WHICH APPLICABLE.—

"(1) CHARACTERISTICS OF BONDS.—This section

shall apply to a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary under such Act—

"(A) provides for payment of interest, or investment yield, only upon redemption;

"(B) provides that no interest, or investment yield, is payable if the bond is redeemed within 12 months after its issuance;

"(C) provides that it ceases to bear interest, or provide investment yield, on the earlier of—

"(i) the date on which the individual in whose name it is purchased attains the age of 70½ years; or

"(ii) five years after the date on which such individual dies, but not later than the date on which he would have attained age 70½ had he lived;

"(D) may be purchased only in the name of an individual described in subsection (a);

"(E) may be redeemed before the death of the individual in whose name it is purchased only if such individual—

"(i) has attained the age of 59½ years,

"(ii) has become disabled (within the meaning of section 72(m)(7)), or

1 *"(iii) redeems the bond within 12 months*
2 *after its issuance; and*
3 *"(F) is not transferable.*
4 *"(d) TAXABILITY OF HOLDER OF QUALIFIED INDI-*
5 *VIDUAL RETIREMENT BONDS.—*
6 *"(1) GROSS INCOME NOT TO INCLUDE BONDS AT*
7 *TIME OF DISTRIBUTION.—For purposes of this chapter,*
8 *in the case of an individual purchasing a bond described*
9 *in subsection (b), gross income does not include any*
10 *amount attributable to the receipt of such bond. Upon*
11 *redemption of such bond, the proceeds shall be sub-*
12 *ject to taxation under this chapter, but the provisions*
13 *of section 72 (relating to annuities, etc.), section 402*
14 *(relating to taxability of beneficiary of employee's trust),*
15 *and section 1232 (relating to bonds and other evidences*
16 *of indebtedness) shall not apply.*
17 *"(2) BASIS.—The basis of any bond received by an*
18 *individual under a qualified individual retirement bond*
19 *purchase shall be zero.*
20 *"(3) BONDS DEEMED REDEEMED.—For purposes*
21 *of paragraph (1), the proceeds of a bond described in*
22 *subsection (b) shall be includible in gross income no later*
23 *than the taxable year in which the individual attains the*
24 *age of 70½ years.".*

(g) CONFORMING AMENDMENTS.—

(1) RETIREMENT INCOME.—Section 37(c)(1) (defining retirement income) is amended—

(A) by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) pensions and annuities including—

"(i) in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1), a distribution by a trust described in section 401(a) which is exempt from tax under section 501(a) to the extent such distribution was not subject to the tax imposed by section 72(p)(3), and

"(ii) a distribution from a qualified individual retirement account described in section 408(a) which is exempt from tax under section 501(a) to the extent such distribution was not subject to the tax imposed by section 72(p)(3),".

(B) by striking out subparagraph (E) and inserting in lieu thereof the following new subparagraphs:

"(E) bonds described in section 405(b) which are received—

"(i) under a qualified bond purchase plan described in section 405(a),

"(ii) in a distribution from a trust described in section 401(a) which is exempt from tax under section 501(a), or

"(iii) from a qualified individual retirement account described in section 408(a) which is exempt from tax under section 501(a), or

"(F) bonds described in section 409(a), or".

(2) ADJUSTED GROSS INCOME.—Section 62 (relating to definition of adjusted gross income) (as amended by section 702(d)(2) of this Act) is amended by inserting after paragraph (8) the following new paragraph:

"(9) INDIVIDUAL RETIREMENT SAVINGS.—The deduction allowed by section 219."

(3) BASIS FOR ASSETS HELD FOR QUALIFIED PENSION PLAN CONTRACTS.—Section 801(g)(7) (relating to basis of assets held for qualified pension plan contracts) is amended by striking out "or (D)" and inserting in lieu thereof "(D), or (E)".

(4) PENSION PLAN RESERVES.—Section 805(d)(1) (relating to definition of pension plan reserves) is amended by striking out "or" at the end of subparagraph (C), by striking out "foregoing." at the end of

subparagraph (D) and inserting in lieu thereof "foregoing; or", and by adding at the end thereof the following new subparagraph:

"(E) purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be qualified individual retirement accounts described in section 408(a) which are exempt from tax under section 501(a)."

(5) AVERAGABLE INCOME.—Paragraph (2)(A) of section 1302(a) (relating to definition of averagable income) is amended by inserting "or 72(p)(3)" after "section 72(m)(5)".

(6) EARNED INCOME.—Section 1348(b)(1) (relating to definition of earned income) is amended by inserting ", 72(p)(3)" after "72(n)".

(h) CLERICAL AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 219 and inserting in lieu thereof the following:

"Sec. 219. Retirement savings.
"Sec. 220. Cross references."

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 408. Individual retirement accounts."

1 *(3) The table of sections for subpart A (designated*
2 *as such by section 201(c) of this Act) of part I of sub-*
3 *chapter D is amended by adding at the end thereof the*
4 *following new item:*

"Sec. 409. Qualified individual bond purchases.".

5 *(4) The table of chapters of subtitle D is amended*
6 *by adding at the end thereof the following new item:*

"Chapter 43. Retirement plans.".

7 *(i) EFFECTIVE DATE.—The amendments made by this*
8 *section shall apply to taxable years beginning after December*
9 *31, 1973.*

10 *SEC. 702. CERTAIN PLANS.*

11 *(a) CERTAIN DEFINED BENEFIT PLANS.—Section 401*
12 *(relating to qualified pension, etc. plans) is amended—*

13 *(1) by inserting at the end of subsection (a) the*
14 *following new paragraphs:*

15 *"(12) In the case of a trust which is a part of a*
16 *defined benefit plan, the plan of which such trust is a*
17 *part satisfies the requirements of subsections (j) and*
18 *(k).*

19 *"(13) A trust forming part of a plan which pro-*
20 *vides contributions or benefits for employees, some or*
21 *all of whom are proprietary employees, shall consti-*
22 *tute a qualified trust under this section only if the*
23 *requirements of section 412 are satisfied.",*

(2) by striking out the first sentence of subsection (d)(1) and inserting in lieu thereof the following:

"In the case of a trust which is created on or after the date of the enactment of this subsection, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will hold such assets will be consistent with the requirements of this section. Notwithstanding the requirements of the preceding sentence, a person (including the employer) other than the trustee or custodian so holding plan assets may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, or exchanges).", and

(3) by redesignating subsection (j) as (l) and inserting after subsection (i) the following new subsections:

"(j) CERTAIN DEFINED BENEFIT PLANS.—

"(1) GENERAL RULES.—A trust which is a part of a defined benefit plan which provides benefits for em-

1 *ployees, some or all of whom are employees within*
2 *the meaning of subsection (c)(1) or proprietary em-*
3 *ployees within the meaning of section 412(b)(1), shall*
4 *not constitute a qualified trust under this section unless*
5 *the plan of which such trust is a part provides that*
6 *the basic benefit accruing for each separate plan year*
7 *of participation by such an employee shall not exceed*
8 *the product of the compensation of such employee under*
9 *the plan for such year (not in excess of $50,000) and*
10 *the percentage shown on the following table correspond-*
11 *ing to his age at the time his current period of participa-*
12 *tion began:*

"Age attained at participation—	
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

13 *For purposes of this subsection, the term 'basic benefit'*
14 *means a benefit in the form of a straight life annuity*
15 *commencing at the later of age 65, or 5 years from the*
16 *time the participant's current period of participation*
17 *began, under a plan which provides no ancillary benefits*
18 *and to which employees do not contribute. The Secretary*
19 *or his delegate shall prescribe regulations under which*
20 *the percentages shown on such table shall be adjusted*

1 *for plans which do not meet the conditions described in*
2 *the preceding sentence and under which percentages for*
3 *ages between those shown on the table shall be deter-*
4 *mined. After December 31, 1977, the Secretary or his*
5 *delegate may, by regulations, prescribe revised percent-*
6 *ages to be used in lieu of the percentages shown in the*
7 *table provided by this subsection. Such percentages shall*
8 *be revised by the Secretary or his delegate on the basis of*
9 *changes in prevailing interest and mortality rates occur-*
10 *ring after 1973.*

11 *"(2) ALTERNATIVE LIMITATION FOR PROPRIE-*
12 *TARY EMPLOYEES.—Notwithstanding the provisions of*
13 *paragraph (1), a qualified plan (other than a plan which*
14 *provides benefits for an employee of an electing small*
15 *business corporation as defined in section 1371) may*
16 *provide for a basic benefit on behalf of an individual who*
17 *is a proprietary employee (within the meaning of sec-*
18 *tion 412(b)(1)) which does not exceed 75 percent of*
19 *the participant's average high 3-year compensation from*
20 *the employer. This amount shall be amortized in equal*
21 *payments over the remaining future service of each such*
22 *proprietary employee or over 10 years whichever is*
23 *the longer. Average high 3-year compensation from*
24 *the employer is the amount includible in the gross income*
25 *of the participant (determined without regard to section*

1 *911) for the period of 3 actual consecutive taxable years*
2 *(or if he has been an employee for less than 3 years, the*
3 *number of years he has been an employee) of the partic-*
4 *ipant for which his compensation from the employer is*
5 *the greatest but not in excess of the first $100,000 per*
6 *year. Where contributions are made under a plan for a*
7 *proprietary employee who was a participant for a period*
8 *of less than 10 years, the basic benefit which may be*
9 *provided under the plan (under this paragraph) shall*
10 *be reduced ratably.*

11 *"(3) AGGREGATION OF PLANS.—For purposes of*
12 *this subsection—*

13 *"(A) DEFINED BENEFIT PLANS.—If a defined*
14 *benefit plan provides benefits for an owner-employee*
15 *of a trade or business who controls, or for two or*
16 *more owner-employees who together control, one or*
17 *more other trades or businesses, that defined benefit*
18 *plan and all defined benefit plans established with re-*
19 *spect to such other trades or businesses shall be con-*
20 *sidered as a single plan.*

21 *"(B) DEFINED CONTRIBUTION PLANS.—If a*
22 *defined contribution plan provides for contributions*
23 *from an owner-employee of a trade or business who*
24 *controls, or for two or more owner-employees who*
25 *together control, one or more other trades or busi-*

1 *nesses, that defined contribution plan and all defined*
2 *contribution plans established with respect to such*
3 *other trades or businesses shall be considered as a*
4 *single plan.*
5 *"(C) RULES.—For purposes of this paragraph,*
6 *the term 'owner-employee' also includes an individ-*
7 *ual who is a proprietary employee (as defined in*
8 *section 412(b)(1)), and the terms 'control' and*
9 *'controls' have the same meaning as they have in*
10 *subsection (d)(9). An owner-employee who is a*
11 *participant in both types of plans (described in sub-*
12 *paragraphs (A) and (B)) shall be treated, under*
13 *regulations prescribed by the Secretary or his dele-*
14 *gate, as if he were a participant in only one such*
15 *type of plan.*
16 *"(4) REDUCTION OF BENEFITS.—In the case of an*
17 *owner-employee or proprietary employee who is covered*
18 *by a defined benefit plan to which this subsection ap-*
19 *plies, as well as a defined contribution plan, if for a*
20 *taxable year a deduction is allowable under section 404*
21 *(a)(9) for a contribution with respect to such owner-*
22 *employee, then for the plan year of a defined benefit plan*
23 *ending with or within such taxable year, in applying this*
24 *subsection the percentage determined under paragraph*
25 *(1) shall be the percentage determined under such para-*

1 *graph (without regard to this paragraph) multiplied*
2 *by the excess of 1 over a fraction—*
3 *"(A) the numerator of which is the amount*
4 *so allowable under section 404(a)(9), and*
5 *"(B) the denominator of which is the limita-*
6 *tion determined under section 404(a)(9) with re-*
7 *spect to such individual.*
8 *"(5) SPECIAL RULES.—Section 404(e) (relating*
9 *to special limitations for self-employed individuals) shall*
10 *not apply to a trust to which this subsection applies.*
11 *"(k) LIMITATION ON BENEFITS UNDER DEFINED*
12 *BENEFIT PLAN.—A trust which is a part of a defined ben-*
13 *efit plan shall not constitute a qualified trust under this*
14 *section if, under the plan of which such trust is a part, the*
15 *benefit under the plan, together with the benefits under all*
16 *other defined benefit plans (whether or not terminated) of*
17 *the employer, exceeds 100 percent of the participant's av-*
18 *erage compensation from the employer which is includible*
19 *in the gross income of the participant (determined without*
20 *regard to section 911) for the period of 3 consecutive taxable*
21 *years of the participant for which his compensation from the*
22 *employer is the greatest. For purposes of this subsection, if*
23 *the benefits provided under a pension plan are not in the*
24 *form of a straight life annuity commencing at age 65 ad-*
25 *justed for fluctuations in the cost of living under a plan to*

which employees do not contribute, which provides no ancillary benefits, the 100 percent limit provided by the preceding sentence shall be adjusted, in accordance with regulations prescribed by the Secretary or his delegate to reflect such other form. In the case of a participant in a defined benefit plan who is also a participant in a money purchase pension plan with respect to the same employment, the limitation determined under this subsection shall be the 100 percent limitation (as adjusted pursuant to the preceding sentence), multiplied by the excess of one over a fraction—

"(1) the numerator of which is the percentage of compensation contributed under the money purchase pension plan (but not greater than 20), and

"(2) the denominator of which is 20.

The percentage limitation applicable to an employee who has been an active participant in the plan for fewer than 10 full plan years shall be the percentage limitation otherwise determined under this subsection, multiplied by a fraction, the numerator of which is the number of such full years and the denominator of which is 10."

(4) by striking out, at the end of subsection (d)(9)(B)(i) "or", by striking out at the end of subsection (d)(9)(B)(ii) "partnership." and inserting in lieu thereof "partnership, or", and by inserting after subsection (d)(9)(B)(ii) the following new clause:

"(iii) in the case of a corporation, own, or are considered as owning, within the meaning of section 1563(e), stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of stock of the corporation."

(b) PLANS OF PROPRIETARY EMPLOYEES.—Subpart B of part I of subchapter D of chapter 1 (relating to special rules), as added by section 201 and amended by section 221, is amended by inserting at the end thereof the following new section:

"SEC. 412. PLAN OF PROPRIETARY EMPLOYEE.

"(a) GENERAL RULE.—In the case of a plan which provides contributions or benefits for employees some or all of whom are proprietary employees (as defined by subsection (c))—

"(1) the provisions of section 404(e) shall apply, and

"(2) paragraph (5) of section 401(d) (without regard to subparagraph (c)) and section 401(e) (without regard to paragraph (2)(E)) shall apply if such plan is not a defined benefit plan but excess contributions shall be repaid to the proprietary employee on whose behalf they were made.

For purposes of paragraph (1), the compensation of a proprietary employee taken into account shall not exceed $100,000 per year, and the basic or regular rate of compensation of such an employee taken into account shall not exceed the rate equivalent to compensation at a rate of $100,000 per year paid in equal installments over the year. The provisions referred to in paragraphs (1) and (2) shall be applied as if each proprietary employee were an employee within the meaning of section 401(c)(1).

"(b) DEFINITIONS.—For purposes of this section and section 401—

"(1) PROPRIETARY EMPLOYEE.—The term 'proprietary employee' means an individual who owns, or is considered as owning, within the meaning of section 1563 (e), stock possessing 2 percent or more of the total combined voting power of all classes of stock entitled to vote or 2 percent or more of the total value of shares of stock of the corporation if the total of the present value of the accrued benefits, of all such employees who are active participants in the plan, derived from employed contributions (within the meaning of section 411(b)(2)) exceeds 25 percent of the present value of such accrued benefits for all active participants in the plan. For purposes of this paragraph, in the case of a profit-sharing or stock bonus plan, the rules of section 1563(e)

shall be applied without respect to paragraph (3)(C) thereof. To the extent provided in regulations prescribed by the Secretary or his delegate, such term also means an individual who has been a proprietary employee within the meaning of the preceding sentence. The Secretary or his delegate is authorized to prescribe by regulations the actuarial assumptions to be applied in computing accrued benefits for purposes of this paragraph and the time at which the present value of such benefits is determined.

"(2) AGGREGATION OF PLANS.—For purposes of this subsection—

"(A) DEFINED BENEFIT PLANS.—If a defined benefit plan provides benefits for a proprietary employee of a trade or business who controls, or for two or more proprietary employees who together control, one or more other trades or businesses, that defined benefit plan and all defined benefit plans established with respect to such other trades or businesses shall be considered as a single plan.

"(B) DEFINED CONTRIBUTION PLANS.—If a defined contribution plan provides for contributions from a proprietary employee of a trade or business who controls, or for two or more proprietary

employees of a trade or business who together control, one or more other trades or businesses, that defined contribution plan and all defined contribution plans established with respect to such other trades or businesses shall be considered as a single plan.

"(C) RULES.—If any such proprietary employee is an owner-employee (within the meaning of section 401(c)(3)) of a trade or business and is a participant in a defined benefit or a defined contribution plan established with respect to that trade or business, such plan shall be taken into account under subparagraph (A) or (B), whichever is applicable, for purposes of this paragraph. A proprietary employee who is a participant in both types of plans (described in subparagraphs (A) and (B)) shall be treated, under regulations prescribed by the Secretary or his delegate, as if he were a participant in only one such type of plan.

"(D) CONTROL.—For purposes of subparagraph (A), a proprietary employee, or two or more proprietary employees, shall be considered to control a trade or business if such proprietary employee, or such two or more proprietary employees together—

1 *"(i) own the entire interest in an unincorpo-*
2 *rated trade or business,*
3 *"(ii) in the case of a partnership, own*
4 *more than 50 percent of either the capital interest*
5 *or the profits interest in such partnership, or*
6 *"(iii) in the case of a corporation, own (or*
7 *are considered as owning, within the meaning*
8 *of section 1563(e)) more than 50 percent of*
9 *the total combined voting power of stock entitled*
10 *to vote or more than 50 percent of the total value*
11 *of shares of stock of the corporation.*
12 *For purposes of subparagraph (B), a proprietary*
13 *employee, or two or more proprietary employees,*
14 *shall be treated as owning any interest in a partner-*
15 *ship which is owned, directly or indirectly, by a*
16 *partnership which such proprietary employee, or such*
17 *two or more proprietary employees, are considered*
18 *to control within the meaning of the preceding*
19 *sentence.".*
20 *(c) Repeal of Section 1379.—Subchapter S of chap-*
21 *ter 1 is amended by striking out section 1379.*
22 *(d) Conforming Amendments.—*
23 *(1) The table of sections for subchapter S of chapter*
24 *1 is amended by striking out the last item in the table.*
25 *(2) Section 62 (relating to adjusted gross income)*
26 *is amended by striking out paragraph (9).*

1 *(e) CLERICAL AMENDMENT.—The table of sections*
2 *for subpart B of part I of subchapter D of chapter 1 (relat-*
3 *ing to special rules), as added by section 221 and amended*
4 *by section 231, is amended by adding at the end thereof*
5 *the following new item:*

"Sec. 412. Plan of a proprietary employee.".

6 *(f) EFFECTIVE DATE.—*
7 *(1) GENERAL RULE.—Except as provided in para-*
8 *graphs (2) and (3), the amendments made by this sec-*
9 *tion shall apply to plan years beginning after Decem-*
10 *ber 31, 1973.*
11 *(2) In the case of a plan in existence on July 24,*
12 *1973, the amendments made by this section shall apply—*
13 *(A) to plan years beginning after Decem-*
14 *ber 31, 1975, or,*
15 *(B) if later, the earlier of plan years beginning*
16 *after—*
17 *(i) the termination of the agreement pur-*
18 *suant to which the plan is maintained, which*
19 *the Secretary of the Treasury or his delegate*
20 *finds to be a collective-bargaining agreement,*
21 *between employee representatives and one or*
22 *more employers, in effect on July 24, 1973,*
23 *or*

1 *(ii) December 31, 1980.*

2 *For purposes of clause (i), the date on which an*
3 *agreement terminates shall be determined without*
4 *regard to any extension thereof agreed to after*
5 *July 24, 1973.*

6 *(3) In the case of a plan in existence on July 24,*
7 *1973, the second sentence of section 401(j)(4) (as*
8 *added by this section) shall apply only with respect*
9 *to plan years beginning after December 31, 1979.*

10 *SEC. 703. TAXATION OF CERTAIN LUMP-SUM DISTRIBU-*
11 *TIONS.*

12 *(a) AMENDMENT OF SECTION 72(n).—Section 72(n)*
13 *(relating to total distributions) is amended by—*

14 *(1) striking out the portion of paragraph (2) pre-*
15 *ceding "applies" the first time it appears and inserting in*
16 *lieu thereof the following:*

17 *"(2) CERTAIN EMPLOYEES.—In any case to which*
18 *this paragraph",*

19 *(2) inserting after paragraph (B) of such para-*
20 *graph the following: "This paragraph applies to*
21 *amounts to which this subsection applies which are dis-*
22 *tributed or paid with respect to an individual who is*
23 *an employee (within the meaning of section 401(c)*
24 *(1)) if the number of plan years such individual was*
25 *such an employee under the plan under which such*

amounts are distributed or paid exceeds 50 percent of the number of plan years for which he was a participant in such plan.",

(3) striking out "this subsection" in paragraph (3) and inserting in lieu thereof "paragraph (2)", and

(4) striking out paragraph (4) and inserting in lieu thereof the following:

"(4) DETERMINATION OF TAX ON CERTAIN TOTAL DISTRIBUTIONS.—Notwithstanding any other provisions of this chapter, except as provided in paragraph (5), the tax on amounts to which this subsection (other than paragraph (2)) applies is 15 times the product of—

"(A) the tax (determined by applying the rates contained in the table in section 1(c)) that would result if the taxable income of the recipient were one-fifteenth of the excess of

"(i) the sum of the amount to which this paragraph applies and the portion of the distribution or payment which receives capital gains treatment under section 402(a)(2) or 403(a)(2)(A), over

"(ii) the minimum distribution allowance, multiplied by

"(B) a fraction, the numerator of which is the number of calendar years after 1973 the recipient

was an active participant in the plan and the denominator of which is the total number of calendar years the recipient was an active participant in the plan. For purposes of this paragraph, the minimum distribution allowance is one-half of the first $20,000 of the sum referred to in clause (i), reduced (but not below zero) by 20 percent of the excess of such sum over $20,000.

"(5) MULTIPLE DISTRIBUTIONS.—If an individual receives more than one distribution to which paragraph (4) applies during a period of 6 consecutive taxable years of that individual, the tax payable on the second or subsequent such distribution shall be determined, under regulations prescribed by the Secretary or his delegate, by applying the provisions of paragraph (4) to the aggregate amount of all such distributions within such period and reducing the amount of the tax so determined by the amount of tax paid with respect to prior distributions within the period. For purposes of this paragraph, such distributions shall be aggregated without regard to the source of such distributions.

"(6) COMMUNITY PROPERTY LAWS.—The provisions of paragraphs (4) and (5) shall be applied without regard to the community property laws of any State.

1 *"(7) ANNUITIES.—For purposes of paragraphs*
2 *(4) and (5), the distribution of an annuity shall be*
3 *treated as a distribution in an amount equal to the cash*
4 *surrender value of such annuity on the date of distribu-*
5 *tion.".*
6 *(b) AMENDMENT OF SECTION 402.—Section 402(a)*
7 *(relating to taxability of beneficiary of exempt trust) is*
8 *amended by striking out paragraph (5) and inserting in*
9 *lieu thereof the following:*
10 *"(5) PHASE OUT OF CAPITAL GAINS TREAT-*
11 *MENT.—The first sentence of paragraph (2) shall apply*
12 *to a distribution paid after December 31, 1973, only to*
13 *the extent that it does not exceed such distribution (re-*
14 *duced in accordance with such sentence) multiplied by a*
15 *fraction, the numerator of which is the number of full*
16 *years of active participation by the employee in such*
17 *plan for plan years beginning before January 1, 1974,*
18 *and the denominator of which is the number of full years*
19 *of active participation by the employee in such plan."*
20 *(c) AMENDMENT OF SECTION 403.—Section 403(a)*
21 *(relating to taxability of beneficiary under a qualified annuity*
22 *plan) is amended by striking out paragraph (2)(C) and*
23 *inserting in lieu thereof the following:*
24 *"(C) PHASE OUT OF CAPITAL GAINS TREAT-*
25 *MENT.—Subparagraph (A) shall apply to a pay-*

ment paid after December 31, 1973, only to the extent that it does not exceed such payment (reduced in accordance with such subparagraph) multiplied by a fraction, the numerator of which is the number of full years of active participation by the employee in such plan for plan years beginning before January 1, 1974, and the denominator of which is the number of full years of active participation by the employee in such plan."

(d) CONFORMING AMENDMENTS.—

(1) PROHIBITION OF DOUBLE INCOME AVERAGING.—Subsection 1304(b) (relating to special rules) is amended by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (7), respectively, and inserting after paragraph (2) the following new paragraph:

"(3) section 72(n)(4) (relating to determination of tax on certain total distributions) and section 72(n)(5) (relating to multiple distributions),".

(2) LIMITATION ON THE APPLICATION OF SUBSECTION 1304(b).—Section 1304 (relating to special rules on income averaging) is amended by adding at the end thereof the following new subsection:

"(g) LIMITATION ON THE APPLICATION OF SUBSECTION.—(b). Recipients of distributions to which section 72

1 *(n)(2) or 72(n)(4) apply may choose the benefit of this*
2 *part except with respect to such distributions.".*
3 *(e) EFFECTIVE DATES.—The amendments made by*
4 *this section shall take effect on January 1, 1974.*
5 ***SEC. 704. CONTRIBUTIONS ON BEHALF OF SELF-EM-***
6 ***PLOYED INDIVIDUALS AND PROPRIETARY***
7 ***EMPLOYEES.***
8 *(a) REVISION OF LIMITATIONS.—*
9 *(1) LIMIT ON DEDUCTIONS.—Section 404(e) (re-*
10 *lating to deduction limitations) is amended by—*
11 *(A) striking out "$2,500, or 10 percent" in*
12 *paragraphs (1) and (2)(A) and inserting in lieu*
13 *thereof "$7,500, or 15 percent",*
14 *(B) striking out "whichever is the lesser." in*
15 *paragraphs (1) and (2)(A) and inserting in lieu*
16 *thereof "whichever is the lesser, the alternative limi-*
17 *tation for proprietary employees described in para-*
18 *graph (4), or the minimum deductible amount*
19 *described in paragraph (5).", and*
20 *(C) by inserting after paragraph (3) the fol-*
21 *lowing new paragraph:*
22 *"(4) ALTERNATIVE LIMITATION FOR PROPRIE-*
23 *TARY EMPLOYEES.—*
24 *"(A) Notwithstanding the limitations of para-*
25 *graph (1) (but subject to the provisions of section*

414), in the case of a plan (other than a plan which provides benefits for an employee of an electing small business corporation as defined in section 1371) which provides contributions for employees, some or all of whom are proprietary employees (within the meaning of section 412(b)(1)), the amounts deductible under subsection (a) in any taxable year with respect to contributions on behalf of any proprietary employee may equal the present value (based on a 6 percent interest rate) of the 'unfunded limitation balance'.

"(B) The term 'unfunded limitation balance' means in the case of a plan which provides no ancillary benefits any excess of—

"(i) 75 percent of the 'contribution base' divided by the appropriate conversion factor (within the meaning of section 411(b)(2)), over

"(ii) what the balance of the employee's account under the plan, as of the close of the preceding plan year, would be if it earned interest at the rate of 6 percent per annum, compounded annually until 'normal retirement age'.

The Secretary or his delegate shall prescribe regula-

tions defining the term 'unfunded limitation balance' for plans providing for ancillary benefits.

"(C) The term 'contribution base' means the average high 3 year compensation includible in the gross income of the participant (determined without regard to section 911) for any 3 consecutive (current or past) taxable years (or if he has been an employee for less than 3 years, the number of years he has been an employee) of the participant for which his compensation from the employer is the greatest, but not in excess of the first $100,000 of compensation for any year.

"(D) For purposes of this paragraph, the term 'normal retirement age' means the older of age 65 or if older the age of the employee on the last day of the tenth year for which he will be a participant under the plan.

"(E) In making the computation provided under this paragraph the provisions of paragraph (2) shall be applicable.

"(F) Notwithstanding the limits of subsections (a) (3) and (7) (whichever is applicable), if the amount determined under subparagraph (A) for any taxable year is less than the amount allowable as a deduction under such subsections then,

the excess of the amount allowable under such subsections over the amount determined in subparagraph (A) shall be carried forward and allowable as a deductible contribution when paid in succeeding taxable years to the extent that the total contributions do not exceed the amount determined under subparagraph (A) in such taxable year.

"(G) The Secretary or his delegate may prescribe separate conversion factors under subparagraph (B)(i) for whose normal retirement age is other than age 65 and may adjust this factor to reflect changes in mortality or interest rates.

"(5) MINIMUM DEDUCTIBLE AMOUNT.—For purposes of this subsection, the minimum deductible amount for any employee is the lesser of—

"(A) $750, or

"(B) 100 percent of his earned income derived by him from the trade of business with respect to which the plan is established.".

(2) LIMIT ON CONTRIBUTIONS.—Section 401(e)(3) (relating to contributions for premiums on annuity, etc., contracts) is amended by striking out "$2,500" and inserting in lieu thereof "$7,500".

(3) LIMIT ON AMOUNT RECEIVED.—Section 72(m)(5)(B)(i) (relating to penalties applicable to cer-

1 *tain amounts received by owner-employees) is amended*
2 *by striking out "$2,500" and inserting in lieu thereof*
3 *"$7,500".*
4 *(b) DISCRIMINATION.—Section 401(a) (relating to*
5 *requirements for qualification) is amended by adding at the*
6 *end thereof the following new paragraph:*
7 *"(12) In the case of a plan which provides con-*
8 *tributions or benefits for employees some or all of*
9 *whom are employees (as defined in subsection (c)(1)),*
10 *the compensation of such an employee taken into account*
11 *for purposes of paragraph (4) shall not exceed*
12 *$100,000 per year, and the basic or regular rate of*
13 *compensation of such an employee taken into account*
14 *for such purposes shall not exceed the rate equivalent*
15 *to compensation at a rate of $100,000 per year paid*
16 *in equal installments over the year.".*
17 *(c) EFFECTIVE DATE.—The amendments made by this*
18 *section shall apply for taxable years beginning after 1973.*
19 *SEC. 705. COLLECTIVELY BARGAINED PLANS.*
20 *(a) GENERAL RULE.—Subpart B of part I of sub-*
21 *chapter D of chapter 1 (relating to special rules) as added*
22 *by section 201 and amended by sections 221 and 702 is*
23 *amended by inserting at the end thereof the following new*
24 *section:*

1 *"SEC. 413. COLLECTIVELY BARGAINED PLANS.*

2 *"(a) APPLICATION OF SECTION.—This section applies*
3 *to—*

4 *"(1) a plan created and maintained pursuant to*
5 *an agreement which the Secretary or his delegate finds to*
6 *be a collective bargaining agreement between employee*
7 *representatives and one or more employers, and*

8 *"(2) each trust which is a part of such plan.*

9 *"(b) GENERAL RULE.—If this section applies to a*
10 *plan, notwithstanding any other provision of this title—*

11 *"(1) Section 410 shall be applied as if all employ-*
12 *ees of each of the employers who are parties to the*
13 *collective bargaining agreement and who contribute to*
14 *or under the plan on the same basis were employed by a*
15 *single employer.*

16 *"(2) Section 401(a)(4) and 411(c)(4) shall be*
17 *applied as if all participants who are employed by em-*
18 *ployers who contribute to or under the plan on the same*
19 *basis were employed by a single employer.*

20 *"(3) For purposes of section 401(a), in deter-*
21 *mining whether the plan of an employer is for the*
22 *exclusive benefit of his employees and their beneficiaries,*
23 *all plan participants shall be considered to be his em-*
24 *ployees.*

1 *"(4) Section 411 shall be applied as if all em-*
2 *ployers who have been parties to the collective bargain-*
3 *ing agreement constituted a single employer.*
4 *"(5) The minimum funding standard provided by*
5 *section 4971 shall be determined as if all participants in*
6 *the plan were employed by a single employer. For pur-*
7 *poses of section 4971 (other than for purposes of*
8 *determining the portion of a liability required to be*
9 *amortized for a plan year), a plan year shall be con-*
10 *sidered to begin on the date the collective bargaining*
11 *agreement is first effective (treating an agreement to ex-*
12 *tend a prior agreement as a new agreement, and to end*
13 *on the expiration date of the agreement determined under*
14 *such agreement).*
15 *"(6) For a plan year (determined without regard*
16 *to paragraph (5)) the liability under section 4972 of*
17 *each employer who is a party to the collective bargaining*
18 *agreement shall be determined, in accordance with regu-*
19 *lations prescribed by the Secretary or his delegate, on*
20 *the basis of his contributions under the plan and his*
21 *liability for contributions under the plan. The liability for*
22 *tax under such section in the case of such a plan shall*
23 *apply first to the extent of any delinquency in meeting*
24 *required contributions on the part of an employer under*
25 *such plan.*

1 *"(7) For a calendar year the liability under sec-*
2 *tion 4975 of each employer who is a party to the*
3 *collective bargaining agreement during the calendar*
4 *year shall be determined by reference to the number of*
5 *plan participants employed by the employer at any one*
6 *time during the calendar year.*
7 *"(8) Each applicable limitation provided by sec-*
8 *tion 404(a) shall be determined for a plan year (within*
9 *the meaning of paragraph (5)) as if all participants*
10 *in the plan were employed by a single employer. The*
11 *amounts contributed to or under the plan by each em-*
12 *ployer who is a party to the contract, for the portion of*
13 *his taxable year which is included within such a plan*
14 *year, shall be considered not to exceed such a limitation*
15 *if the anticipated employer contributions for such plan*
16 *year (determined in a manner consistent with the*
17 *manner in which actual employer contributions for such*
18 *plan year are determined) do not exceed such limitation.*
19 *If such anticipated contributions exceed such a limita-*
20 *tion, the portion of each such employer's contributions*
21 *which is not deductible under section 404 shall be deter-*
22 *mined in accordance with regulations prescribed by the*
23 *Secretary or his delegate."*
24 *(b) EFFECTIVE DATE.—The amendment made by this*

1 *section shall apply for taxable years and plan years begin-*
2 *ning on or after January 1, 1976.*
3 *SEC. 706. MISCELLANEOUS PROVISIONS.*
4 *(a) EMPLOYEE CONTRIBUTIONS OF OWNER-EM-*
5 *PLOYEES.—Section 401(d)(4)(B) (relating to additional*
6 *requirements for qualification of trusts and plans benefiting*
7 *owner-employees) is amended by inserting "in excess of*
8 *contributions made by an owner-employee as an employee"*
9 *after "benefits".*
10 *(b) CERTAIN CUSTODIAL ACCOUNTS.—Section 401*
11 *(relating to pension, profit-sharing, and stock bonus plans)*
12 *is amended by striking out subsection (f) and inserting in*
13 *lieu thereof the following:*
14 *"(f) CERTAIN CUSTODIAL ACCOUNTS OR OTHER AR-*
15 *RANGEMENTS.—For purposes of this title, a custodial account*
16 *or an arrangement similar to a custodial account or similar*
17 *to an annuity contract shall be treated as a qualified trust*
18 *under this section if—*
19 *"(1) the custodial account or arrangement would,*
20 *except for the fact that it is not a trust, constitute a quali-*
21 *fied trust under this section, and*
22 *"(2) the assets thereof are held by a bank (as de-*
23 *fined in subsection (d)(1)) or another person who dem-*
24 *onstrates, to the satisfaction of the Secretary or his dele-*

1 *gate, that the manner in which he will hold the assets*
2 *will be consistent with the requirements of this section.*
3 *For purposes of this title, in the case of a custodial account*
4 *or arrangement treated as a qualified trust under this section*
5 *by reason of this subsection, the person holding the assets of*
6 *such account or arrangement shall be treated as the trustee*
7 *thereof.".*

8 *(c) CUSTODIAL ACCOUNTS FOR REGULATED INVEST-*
9 *MENT COMPANY STOCK.—Section 403(b) (relating to tax-*
10 *ability of beneficiary under annuity purchased by section 501*
11 *(c)(3) organization or public school) is amended by adding*
12 *at the end thereof the following new paragraph:*

13 *"(7) CUSTODIAL ACCOUNTS FOR REGULATED IN-*
14 *VESTMENT COMPANY STOCK.—*

15 *"(A) AMOUNTS PAID TREATED AS CONTRIBU-*
16 *TIONS.—For purposes of this title, amounts paid by*
17 *an employer described in paragraph (1)(A) to a*
18 *custodial account which satisfies the requirements of*
19 *section 401(f) shall be treated as amounts con-*
20 *tributed by him for an annuity contract for his*
21 *employee if the amounts are paid to provide a retire-*
22 *ment annuity for that employee and are to be in-*
23 *vested in regulated investment company stock to be*
24 *held in that custodial account.*

1 *"(B) ACCOUNT TREATED AS PLAN.—For pur-*
2 *poses of this title, a custodial account which satisfies*
3 *the requirements of section 401(f) shall be treated as*
4 *an organization described in section 401(a) with*
5 *respect to amounts received by it (and income from*
6 *investment thereof) which are excluded under this*
7 *subsection from the gross income of the employees on*
8 *whose behalf such amounts are paid.*
9 *"(C) REGULATED INVESTMENT COMPANY.—*
10 *For purposes of this paragraph, the term 'regulated*
11 *investment company' means a domestic corporation*
12 *which is a regulated investment company within the*
13 *meaning of section 851(a), and which issues only*
14 *redeemable stock.".*
15 *(d) AMENDMENTS TO SECTION 404.—*
16 *(1) Section 404(a) (relating to deduction for con-*
17 *tributions of an employer to an employee's trust, etc.)*
18 *is amended by—*
19 *(A) striking out paragraph (1)(A);*
20 *(B) striking out paragraph (1) (B) and (C)*
21 *and inserting in lieu thereof the following:*
22 *"(B) the amount necessary to provide with re-*
23 *spect to all of the employees under the trust the*
24 *remaining unfunded cost of their past and current*
25 *service credits distributed as a level amount, or a*

1 *level percentage of compensation, over the remain-*
2 *ing future service of each such employee, as deter-*
3 *mined under regulations prescribed by the Secretary*
4 *or his delegate, but if such remaining unfunded cost*
5 *with respect to any three individuals is more than*
6 *50 percent of such remaining unfunded cost, the*
7 *amount of such unfunded cost attributable to such*
8 *individuals shall be distributed over a period of at*
9 *least 5 taxable years, or*
10 *"(C) in lieu of the amount allowable under*
11 *subparagraph (B), an amount equal to the normal*
12 *cost of the plan, as determined under regulations*
13 *prescribed by the Secretary or his delegate, plus,*
14 *if past service or other supplementary pension or*
15 *annuity credits are provided by the plan, an amount*
16 *not in excess of 10 percent of the cost which would*
17 *be required to completely fund or purchase such*
18 *pension or annuity credits as of the date when they*
19 *are included in the plan as determined under regu-*
20 *lations prescribed by the Secretary or his delegate,*
21 *except that in no case shall a deduction be allowed*
22 *for any amount (other than the normal cost) paid*
23 *in after such pension or annuity credits are com-*
24 *pletely funded or purchased."; and*

(c) adding immediately after paragraph (1) (D) the following new sentence: "The limitations under subparagraphs (B) and (C) shall not apply with respect to the amount of a contribution made to or under a pension plan to the extent such contribution does not exceed the minimum funding standard described in section 4971.".

(2) Section 404(a) (relating to deduction for contributions of an employer to an employee's trust, etc.) is amended by striking out paragraph (6) and inserting in lieu thereof:

"(6) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)."

(e) INCLUSION OF CERTAIN EMPLOYEE CONTRIBUTIONS IN GROSS INCOME.—Subpart A of part I of subchapter D of chapter 1 (relating to general rules) as added by section 201 and as amended by sections 701 (b) and (e) of this Act is further amended by adding at the end thereof the following new section:

1 *"SEC. 414. INCLUSION OF CERTAIN EMPLOYER CONTRI-*
2 *BUTIONS IN GROSS INCOME.*

3 *"(a) INCLUSION OF CONTRIBUTIONS IN GROSS IN-*
4 *COME.—Notwithstanding the provisions of section 402 (relat-*
5 *ing to taxability of beneficiary of employees' trust), section*
6 *403 (relating to taxation of employee annuities), or section*
7 *405(d) (relating to taxability of beneficiaries under quali-*
8 *fied bond purchase plans), an individual shall include in*
9 *gross income, for his taxable year in which or with which*
10 *the taxable year of his employer ends, the amount equal*
11 *to the excess of—*

12 *"(1) the amount of the contributions made on his*
13 *behalf by the employer during the taxable year of the*
14 *employer (including amounts deemed to be paid during*
15 *such year under section 404(a)(6)) to or under a*
16 *money purchase pension plan which satisfies the re-*
17 *quirements of section 401(a), 404(a)(2), or 405(a)*
18 *during such taxable year of the employer, over*

19 *"(2) 20 percent of such individual's compensation*
20 *otherwise paid or accrued by him from such employer*
21 *during the employer's taxable year.*

22 *In any taxable year of an individual in which he is covered*
23 *under two or more money purchase pension plans main-*
24 *tained by an employer, the amount includable in gross*
25 *income shall be the amount by which the total of such*

1 *contributions exceeds 20 percent of the compensation re-*
2 *ceived or accrued by such individual during the taxable*
3 *year of his employer.*

4 *"(b) Treatment of Amounts Included in Gross*
5 *Income.—Any amount included in the gross income of an*
6 *individual under subsection (a) shall be treated as con-*
7 *sideration for the contract contributed by the individual*
8 *for purposes of section 72 (relating to annuities).*

9 *"(c) Deduction for Amounts Not Received as*
10 *Benefits.—If—*

11 *"(1) Amounts are included in the gross income*
12 *of an individual under subsection (a), and*

13 *"(2) the rights of such individual (or his bene-*
14 *ficiaries) under the plan terminate before payments*
15 *under the plan which are excluded from gross income*
16 *equal the amounts included in gross income under sub-*
17 *section (a),*

18 *then there shall be allowed as a deduction, for the taxable*
19 *year in which such rights terminate, an amount equal to*
20 *the excess of the amounts included in gross income under*
21 *subsection (a) over such payments.*

22 *"(d) Limitations.—(1) Subsection (a) shall not ap-*
23 *ply for a taxable year of an employee if, at all times during*
24 *the employer's taxable year referred to in subsection (a),*
25 *under the money purchase pension plans maintained by the*

1 *employer (considering all such plans as a single plan) the*
2 *rate at which employer contributions are to be made with*
3 *respect to employee compensation does not exceed 20*
4 *percent.*

5 *"(2) Subsection (a) shall not apply to contributions*
6 *made to or under a money purchase pension plan on behalf of*
7 *an individual who is an employee within the meaning of sec-*
8 *tion 401(c)(1).*

9 *"(e) REGULATIONS.—The Secretary or his delegate is*
10 *authorized to prescribe such forms and regulations as may*
11 *be necessary to carry out the purposes of this section, includ-*
12 *ing forms on which employers may be required to furnish*
13 *needful information to employees. Such forms shall be fur-*
14 *nished to employees at such time as the Secretary or his dele-*
15 *gate may by regulations prescribe."*

16 *(f) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS*
17 *ON BEHALF OF CORPORATE EMPLOYEES.—Section 404 (re-*
18 *lating to deduction for contributions of an employer to an*
19 *employees' trust or annuity plan and compensation under a*
20 *deferred-payment plan) is amended by adding at the end*
21 *thereof the following new subsection:*

22 *"(h) LIMITATION ON DEDUCTION FOR CONTRIBU-*
23 *TIONS ON BEHALF OF CORPORATE EMPLOYEES.—Notwith-*
24 *standing the provisions of subsection (a), no deduction shall*
25 *be allowed for a contribution made for or on behalf of a*

1 *corporate employee to or under a defined benefit plan or a*
2 *defined contribution plan if the amount of such contribution*
3 *or if the benefit provided under the plan exceeds the amount*
4 *specified as an alternative limitation on deduction or benefits*
5 *for proprietary employees in subsection (e)(4) or section*
6 *401(j)(2), whichever is applicable.".*

7 *(g) PENALTY FOR FAILURE TO FURNISH INFORMA-*
8 *TION.—Subchapter B of chapter 68 (relating to assessable*
9 *penalties) as amended by section 221 of this Act is further*
10 *amended by inserting at the end thereof the following new*
11 *section:*

12 *"SEC. 6691. REPORTS BY EMPLOYERS.*

13 *"(a) CIVIL PENALTY.—If any person who is required,*
14 *by regulations prescribed under section 409(e), or by regu-*
15 *lations prescribed under section 151 of the Retirement In-*
16 *come Security for Employees Act, to furnish information to*
17 *the Secretary or his delegate or to an employee fails to comply*
18 *with such requirement at the time prescribed by such regula-*
19 *tions, such person shall pay a penalty of $10 for each such*
20 *failure, unless it is shown that such failure is due to reason-*
21 *able cause.*

22 *"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—*
23 *Subchapter B of chapter 63 (relating to deficiency proce-*
24 *dures for income, estate, gift and certain excise taxes) shall*

1 *not apply in respect of the assessment or collection of any*
2 *penalty imposed by subsection (a).".*
3 *(h) Net Operating Loss.—Section 172(d)(4) (re-*
4 *lating to net operating loss modifications) is amended by—*
5 *(1) striking out "and" at the end of subparagraph*
6 *(C),*
7 *(2) striking out "such individual." in subparagraph*
8 *(D) and inserting in lieu thereof "such individual;*
9 *and", and*
10 *(3) by adding immediately after subparagraph (D)*
11 *the following new subparagraph (E):*
12 *"(E) any deductions allowed under section 219*
13 *shall not be treated as attributable to the trade or*
14 *business of an individual."*
15 *(i) Retroactive Changes in Plan.—Section 401*
16 *(relating to qualified pension, etc., plans) is amended by*
17 *striking out subsection (b) and inserting in lieu thereof:*
18 *"(b) Certain Retroactive Changes in Plan.—A*
19 *stock bonus, pension, profit-sharing, or annuity plan shall*
20 *be considered as satisfying the requirements of subsection (a)*
21 *for the period beginning with the date on which it was put*
22 *into effect, or for the period beginning with the date on which*
23 *there was put into effect any amendment which caused the*
24 *plan to fail to satisfy such requirements, and ending with*
25 *the time prescribed by law for filing the return of the em-*

1 *ployer for his taxable year in which such plan or amend-*
2 *ment was put into effect (including extensions thereof) or*
3 *such later time as the Secretary or his delegate may desig-*
4 *nate, if all provisions of the plan which are necessary to*
5 *satisfy such requirements are in effect by the end of such*
6 *period and have been made effective for all purposes for the*
7 *whole of such period.".*

8 *(j) When Contributions Are Includible in*
9 *Income.—*

10 *(1) Beneficiary of employee's trust.—Sec-*
11 *tion 402(a)(1) (relating to taxability of beneficiary*
12 *of exempt trust) is amended by striking out "(1)*
13 *General rule.—" and inserting in lieu thereof the*
14 *following:*

15 *"(1) General rules.—A contribution by an em-*
16 *ployer to an employees' trust described in section 401*
17 *(a) which is exempt from tax under section 501(a)*
18 *shall not be includible in the gross income of the em-*
19 *ployee in the year in which so contributed or accrued.*
20 *For purposes of the preceding sentence, a contribution*
21 *shall not be treated as having been made by an employer*
22 *if it is designated as an employee contribution or if the*
23 *contribution is made as a consequence of the employee's*
24 *individual choice in return for a reduction in his compen-*
25 *sation for foregoing an increase in compensation.".*

1 *(2) Employee annuities.—Section 403(a)(1)*
2 *(relating to taxability of beneficiary under a qualified*
3 *annuity plan) is amended to read as follows:*
4 *"(1) General rules.—If an annuity contract is*
5 *purchased by an employer for an employee under a plan*
6 *which meets the requirements of section 404(a)(2)*
7 *(whether or not the employer deducts the amounts paid*
8 *for the contract under such section)—*
9 *"(A) the payment of the purchase price by the*
10 *employer shall not be includible in the gross income*
11 *of the employee in the year in which paid or ac-*
12 *crued; and*
13 *"(B) except as provided in paragraph (2),*
14 *the employee shall include in his gross income the*
15 *amounts received under such contract for the year*
16 *received as provided in section 72 (relating to*
17 *annuities).*
18 *For purposes of subparagraph (A), an amount paid for*
19 *the purchase of an annuity contract shall not be treated*
20 *as being paid by an employer if such amount is desig-*
21 *nated as an amount paid by the employee or if the*
22 *amount is paid as a consequence of the employee's in-*
23 *dividual choice in return for a reduction in his compen-*
24 *sation or for foregoing an increase in compensation.".*

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1 *(3) Effective date.—The amendments made by*
2 *this subsection shall apply with respect to taxable years*
3 *beginning after December 31, 1973.*
4 *(k) Technical Amendments.—*
5 *(1) Information with respect to pension,*
6 *profit sharing and stock bonus plans.—Subpart*
7 *A of part III of subchapter A of chapter 61 (relating*
8 *to information returns) is amended by redesignating*
9 *section 6040 as section 6040A and inserting after section*
10 *6039 the following section:*
11 *"SEC. 6040. INFORMATION REQUIRED IN CONNECTION*
12 *WITH CERTAIN PLANS OF DEFERRED COM-*
13 *PENSATION.*
14 *"(a) In General.—Every employer who establishes*
15 *or maintains a plan of deferred compensation described in*
16 *part I of subchapter D of chapter 1, or the administrator of*
17 *the plan, shall file an annual return stating such information*
18 *as the Secretary or his delegate may by forms or regulations*
19 *prescribe with respect to the qualification, financial condition*
20 *and operations of the pension, annuity, profit-sharing, stock*
21 *bonus, or bond purchase plan established or maintained by*
22 *such employer; except that, in the discretion of the Secretary*
23 *or his delegate, the employer may be relieved from stating in*
24 *its return any information which is reported in returns filed*
25 *by an organization forming a part of such plan.*

1 *"(b) EMPLOYER.—For purposes of this section, the*
2 *term 'employer' includes a person described in section 401*
3 *(c)(4) and an individual who establishes an individual*
4 *retirement account described in section 408. The term 'ad-*
5 *ministrator' means the person or persons described in section*
6 *3(15) of the Welfare and Pension Plans Disclosure Act.*
7 *"(c) CROSS REFERENCE.—For provisions relating to*
8 *penalties for failure to file a return required by this section,*
9 *see section 6652(f).".*
10 *(2) PUBLICITY OF RETURNS.—*
11 *(A) Section 6103 (relating to publicity of re-*
12 *turns and disclosure of information as to persons fil-*
13 *ing income tax returns) is amended by adding at the*
14 *end thereof a new subsection (g) to read as follows:*
15 *"(g) INFORMATION WITH RESPECT TO PENSION,*
16 *PROFIT-SHARING AND STOCK BONUS PLANS.—Any return*
17 *filed under section 6033 or 6040 with respect to a plan*
18 *of deferred compensation (or copy thereof) or under 6051*
19 *(d) with respect to wages paid to an employee shall be*
20 *open to inspection by the proper officers of the Pension*
21 *Benefit Guaranty Corporation.".*
22 *(B) Section 6104 (relating to publicity of*
23 *information required from certain exempt orga-*
24 *nizations and certain trusts) is amended by—*

1 *(i) striking out "(A) In general.—" in*
2 *subsection (a)(1) and inserting in lieu thereof*
3 *"(i) Exempt organizations gener-*
4 *ally.—",*
5 *(ii) inserting "(A) In general.—" in*
6 *subsection (a) immediately after "(1) Public*
7 *inspection.—",*
8 *(iii) inserting the following clause imme-*
9 *diately before subparagraph (B) of subsection*
10 *(a)(1):*
11 *"(ii) Pension, profit-sharing, and*
12 *stock bonus plans.—An application filed*
13 *with respect to the qualification of a pension,*
14 *profit-sharing, or stock bonus plan under sec-*
15 *tion 401(a), 404(a)(2), or 405(a), covering*
16 *more than 25 persons or with respect to the*
17 *exemption from taxation under section 501(a)*
18 *of an organization forming a part of such a*
19 *plan, together with any papers submitted in*
20 *support of such application, shall be open to*
21 *public inspection at such times and in such*
22 *places as the Secretary or his delegate may*
23 *prescribe.", and*
24 *(iv) striking out "and 6056" in subsection*

(b) and inserting in lieu thereof "6040, and 6056".

(3) PENALTIES.—Section 6652 (relating to failure to file certain information returns) is amended by adding at the end thereof the following new subsection:

"(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.—In the case of failure to file a return required under section 6040 (relating to information required in connection with certain plans of deferred compensation) or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $10 for each day during which such failure continues, but the total amount imposed hereunder on any person for failure to file any return shall not exceed $5,000.".

(l) EXCESS CONTRIBUTIONS.—Section 401(e)(1)(B) is amended by striking out clause (ii) and inserting in lieu thereof:

"(ii) with respect to any plan other than a defined benefit plan, the amount of any con-

tribution made by any owner-employee (as an employee) at a rate which exceeds the rate of contributions permitted to be made by employees other than owner-employees;"

(m) PLANS BENEFITING SELF-EMPLOYED INDIVIDUALS.—Section 401(c) (relating to definitions and rules relating to self-employed individuals and owner-employees) is amended by adding at the end thereof the following new paragraph:

"(6) ADDITIONAL REQUIREMENTS FOR QUALIFICATION OF TRUSTS AND PLANS BENEFITING SELF-EMPLOYED INDIVIDUALS.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of paragraph (1) shall constitute a qualified trust only if—

"(A) under the plan, forfeitures attributable to contributions made on behalf of an employee other than an employee within the meaning of paragraph (1) may not inure to the benefit of any individual who, at any time during the period beginning with the taxable year for which the contribution is made and ending with the taxable year during which the forfeiture occurs, is an employee within the meaning of paragraph (1),

"(B) in the case of a defined benefit pension plan, a separate account is maintained with respect to all participants under the plan who are not employees within the meaning of paragraph (1) and another separate account is maintained with respect to all participants under the plan who are employees within the meaning of paragraph (1), and

"(C) it meets the requirements for a qualified trust which is a part of a defined benefit plan which provides benefits for employees, some or all of whom are employees within the meaning of subsection (c)(1) or proprietary employees within the meaning of section 412(b)(1), as those requirements are defined in subsections 401(j) and 401(k).

(n) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Section 6033(c) (relating to cross-references) is amended by adding at the end thereof the following:

"For provisions relating to information required in connection with certain plans of deferred compensation, see section 6040.".

(2) Section 6047 (relating to information with respect to certain trusts and annuity and bond purchase plans) is amended by striking out subsection (d) and inserting in lieu thereof the following:

1 *"(d) CROSS REFERENCES.—*

2 *"(1) For provisions relating to penalties for failure*
3 *to file a return required by this section, see section*
4 *6652(f).*

5 *"(2) For criminal penalty for furnishing fraudu-*
6 *lent information, see section 7207.".*

7 *(3) Section 6051 (relating to receipts for employ-*
8 *ees) is amended by inserting after "exemption," in sub-*
9 *section (a) the following: "or who pays wages as defined*
10 *in section 3121(a), 3306(b), or 3041(a) to an individ-*
11 *ual who is an active participant in a plan described in*
12 *section 219(b)(2),".*

13 *(4) The table of sections for subpart A of part III*
14 *of subchapter A of chapter 61 is amended by striking out*
15 *the last item and inserting in lieu thereof the following:*

"Sec. 6040. Information required in connection with certain plans of deferred compensation.
"Sec. 6040A. Cross references.".

16 *(5) Section 62 (relating to definition of adjusted*
17 *gross income) is amended by adding after paragraph*
18 *(9) the following new paragraph:*

19 *"(10) MONEY PURCHASE PENSION PLANS.—The*
20 *deduction allowed by section 410(c).".*

21 *(6) CLERICAL AMENDMENTS.—*

22 *(A) The table of sections for part I of sub-*
23 *chapter D of chapter 1 as amended by sections 701*

1 *(b) and (e) of this Act is further amended by in-*
2 *serting at the end thereof the following new item:*

"Sec. 410. Inclusion of certain employer contributions in gross income.".

3 *(B) The table of sections for subchapter B of*
4 *chapter 68 as amended by section 221(b) of this*
5 *Act is further amended by inserting at the end*
6 *thereof the following new item:*

"Sec. 6691. Reports by employers.".

7 *(o) EFFECTIVE DATES.—Except as otherwise provided*
8 *in this section, the amendments made by this section shall*
9 *take effect on January 1, 1974.*

Passed the House of Representatives February 28, 1974.

Attest: W. PAT JENNINGS,
Clerk.

Passed the Senate March 4, 1974.

Attest: FRANCIS R. VALEO,
Secretary.

Senate Requests Conference

Mr. Williams. Mr. President, I move that the Senate insist on its amendment and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Acting President pro tempore appointed Mr. Long, Mr. Williams, Mr. Randolph, Mr. Nelson, Mr. Bentsen, Mr. Javits, Mr. Schweiker, Mr. Bennett, and Mr. Curtis conferees on the part of the Senate.

Mr. Mansfield subsequently said: Mr. President, I ask unanimous consent that the Senate reconsider its action on the adoption of H.R. 2 and its action on sending H.R. 2 to conference.

The Acting President pro tempore. Without objection, it is so ordered.

Mr. Williams. Mr. President, I move to table the motion to reconsider.

The motion was agreed to.

[From the Congressional Record—Senate, Mar. 6, 1974]

* * * * * * *

ORDER FOR PRINTING OF 200 ADDITIONAL COPIES OF H.R. 2

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be printed 200 additional copies of H.R. 2, the pension reform bill, as it passed the House of Representatives.

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

[The text of H.R. 2 ordered printed as passed by the House follows:]

) CONGRESS
2D SESSION

H. R. 2

IN THE SENATE OF THE UNITED STATES

MARCH 6, 1974

Ordered printed as passed by the House, by unanimous consent

AN ACT

To provide for pension reform.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE AND TABLE OF CONTENTS

4 SECTION 1. This Act may be cited as the "Employee
5 Benefit Security Act of 1974".

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1 Subtitle A—Policy; Definitions

2 FINDINGS AND DECLARATION OF POLICY

3 SEC. 2. (a) The Congress finds that the growth in size,
4 scope, and numbers of employee benefit plans in recent years

1 has been rapid and substantial; that the operational scope
2 and economic impact of such plans is increasingly interstate;
3 that the continued well-being and security of millions of
4 employees and their dependents are directly affected by
5 these plans; that they are affected with a national public
6 interest; that they have become an important factor affecting
7 the stability of employment and the successful development
8 of industrial relations; that they have become an important
9 factor in commerce because of the interstate character of
10 their activities, and of the activities of their participants, and
11 the employers, employee organizations, and other entities
12 by which they are established or maintained; that a large
13 volume of the activities carried on by such plans are affected
14 by means of the mails and instrumentalities of interstate
15 commerce; that owing to the lack of employee information
16 and adequate safeguards concerning their operation, it is
17 desirable in the interests of employees and their beneficiaries,
18 and to provide for the general welfare and the free flow of
19 commerce, that disclosure be made and safeguards be pro-
20 vided with respect to the establishment, operation, and
21 administration of such plans; that they substantially affect
22 the revenues of the United States because they are afforded
23 preferential Federal tax treatment; that despite the enor-
24 mous growth in such plans many employees with long years
25 of employment are losing anticipated retirement benefits

1 owing to the lack of vesting provisions in such plans; that
2 owing to the inadequacy of current minimum standards,
3 the soundness and stability of plans with respect to adequate
4 funds to pay promised benefits may be endangered; that
5 owing to the involuntary termination of plans before requi-
6 site funds have been accumulated, employees and their
7 dependents have been deprived of anticipated benefits; and
8 that it is therefore desirable in the interests of employees
9 and their beneficiaries, for the protection of the revenue of
10 the United States, and to provide for the free flow of com-
11 merce, that minimum standards be provided assuring the
12 equitable character of such plans and their financial sound-
13 ness.

14 (b) It is hereby declared to be the policy of this
15 title to protect interstate commerce and the interests of par-
16 ticipants in employee benefit plans and their beneficiaries, by
17 requiring the disclosure and reporting to participants and
18 beneficiaries of financial and other information with respect
19 thereto, by establishing standards of fiduciary conduct, re-
20 sponsibility, and obligation upon all persons who exercise
21 any powers of control, management, or disposition with
22 respect to employee benefit funds or have authority or respon-
23 sibility to do so, or have authority or responsibility in the
24 administration of employee benefit plans, and by providing
25 for appropriate remedies, sanctions, and ready access to the
26 Federal courts.

1 (c) It is hereby further declared to be the policy of this
2 title to protect interstate commerce, the Federal taxing
3 power, and the interests of participants in private pension
4 plans and their beneficiaries by improving the equitable
5 character and the soundness of such plans by requiring them
6 to vest the accrued benefits of employees with significant pe-
7 riods of service, to meet minimum standards of funding,
8 and by requiring plan termination insurance.

9 DEFINITIONS

10 SEC. 3. For purposes of this title:

11 (1) The term "employee welfare benefit plan" means
12 any plan, fund, or program which is communicated or its
13 benefits described in writing to the employees, and which
14 was heretofore or is hereafter established or maintained by
15 an employer or by an employee organization, or by both,
16 for the purpose of (A) providing for its participants or their
17 beneficiaries, through the purchase of insurance or otherwise,
18 medical, surgical, or hospital care or benefits, or benefits in
19 the event of sickness, accident, disability, death or unemploy-
20 ment, or vacation benefits, apprenticeship or other training
21 programs, or day care centers, scholarship funds, or prepaid
22 legal services, or (B) in the case of a fund subject to the
23 restrictions of section 302(c) of the Labor Management
24 Relations Act, 1947, providing any other benefit which may
25 be permitted by section 302(c)(5), 302(c)(6), or 302
26 (c)(7) of that Act.

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1 (2) The term "employee pension benefit plan" or
2 "pension plan" means any plan, fund, or program which is
3 communicated or its benefits described in writing to the em-
4 ployees, and which was heretofore or is hereafter established
5 or maintained by an employer or by an employee organiza-
6 tion, or by both, if by its express terms or as a result of sur-
7 rounding circumstances such plan, fund, or program results
8 in a deferral of income by participants for periods, extending
9 to the termination of participation or beyond, regardless of
10 the method of calculating the contributions made to the plan,
11 the method of calculating the benefits under the plan or the
12 method of distributing benefits from the plan.

13 (3) The term "employee benefit plan" or "plan" means
14 an employee welfare benefit plan or an employee pension
15 benefit plan or a plan providing both welfare and pension
16 benefits.

17 (4) The term "employee organization" means any la-
18 bor union or any organization of any kind, or any agency or
19 employee representation committee, association, group, or
20 plan, in which employees participate and which exists for the
21 purpose in whole or in part, of dealing with employers con-
22 cerning an employee benefit plan, or other matters incidental
23 to employment relationships; or any employees' beneficiary
24 association organized for the purpose, in whole or in part,
25 of establishing such a plan.

1 (5) The term "employer" means any person acting
2 directly as an employer or indirectly in the interest of an
3 employer in relation to an employee benefit plan, and in-
4 cludes a group or association of employers acting for an
5 employer in such capacity.

6 (6) The term "employee" means any individual em-
7 ployed by an employer.

8 (7) The term "participant" means any employee or
9 former employee of an employer or any member or former
10 member of an employee organization who is or may become
11 eligible to receive a benefit of any type from an employee
12 benefit plan which covers employees of such employer or
13 members of such organization, or whose beneficaries may be
14 eligible to receive any such benefit.

15 (8) The term "beneficiary" means a person designated
16 by a participant or by the terms of an employee benefit
17 plan who is or may become entitled to a benefit thereunder.

18 (9) The term "person" means an individual, partner-
19 ship, corporation, mutual company, joint-stock company,
20 trust, unincorporated organization, association, or employee
21 organization.

22 (10) The term "State" includes any State of the United
23 States, the District of Columbia, Puerto Rico, the Virgin
24 Islands, American Samoa, Guam, Wake Island, and the
25 Canal Zone. The term "United States" when used in the
26 geographic sense means the States and the Outer Conti-

1 nental Shelf lands defined in the Outer Continental Shelf
2 Lands Act (43 U.S.C. 1331–1343).
3 (11) The term "commerce" means trade, traffic, com-
4 merce, transportation, or communication between any State
5 and any place outside thereof.
6 (12) The term "industry or activity affecting com-
7 merce" means any activity, business, or industry in com-
8 merce or in which a labor dispute would hinder or obstruct
9 commerce or the free flow of commerce and includes any
10 activity or industry "affecting commerce" within the mean-
11 ing of the Labor Management Relations Act, 1947, or the
12 Railway Labor Act.
13 (13) The term "Secretary" means the Secretary of
14 Labor.
15 (14) The term "party in interest" means any ad-
16 ministrator, officer, fiduciary, trustee, custodian, counsel, or
17 employee of any employee benefit plan, or a person provid-
18 ing benefit plan services to any such plan, or an employer any
19 of whose employees are covered by such a plan or any person
20 controlling, controlled by, or under common control with,
21 such employer or officer or employee or agent of such em-
22 ployer or such person, or an employee organization having
23 members covered by such plan, or an officer or employee or
24 agent of such an employee organization having members

1 covered by such plan, or a relative or partner of, or joint
2 venturer with, any of the above described persons.
3 (15) The term "relative" means a spouse, ancestor,
4 child, grandchild, brother, sister, son-in-law, daughter-in-
5 law, father-in-law, mother-in-law, brother-in-law, or sister-
6 in-law.
7 (16) Except as used in section 111, the term "ad-
8 ministrator" means—
9 (A) the person specifically so designated by the
10 terms of the plan, collective-bargaining agreement, trust
11 agreement, contract, or other instrument, under which
12 the plan is operated; or
13 (B) in the absence of such designation, (i) the
14 employer in the case of an employee benefit plan estab-
15 lished or maintained by a single employer, (ii) the
16 employee organization in the case of a plan established
17 or maintained by an employee organization, (iii)
18 the association, committee, joint board of trustees, or
19 other similar group of representatives of the parties who
20 established or maintain the plan, in the case of a plan
21 established or maintained by two or more employers or
22 jointly by one or more employers and one or more
23 employee organizations, or (iv) in any case to which

1 clause (i), (ii), or (iii) does not apply, such other
2 person as the Secretary may prescribe.
3 For purposes of section 111, the term "administrator"
4 means a person described in subparagraph (A) or (B) (i),
5 (ii), or (iii), or any person who under the terms of the plan
6 has been expressly given the authority to amend the terms
7 of the plan or the authority to compel action under the terms
8 of the plan on the part of any person named in subpara-
9 graph (A) or (B) (i), (ii), or (iii).
10 (17) The term "separate account" means an account
11 established or maintained by an insurance company under
12 which income, gains, and losses, whether or not realized,
13 from assets allocated to such account, are, in accordance with
14 the applicable contract, credited to or charged against such
15 account without regard to other income, gains, or losses of
16 the insurance company.
17 (18) The term "adequate consideration" when used in
18 section 111 means (A) in the case of a security for which
19 there is a generally recognized market, either (i) the price
20 of the security prevailing on a national securities exchange
21 which is registered under section 6 of the Securities Ex-
22 change Act of 1934, or (ii) if the security is not traded
23 on such a national securities exchange, a price not less favor-
24 able to the plan than the offering price for the security as
25 established by the current bid and asked prices quoted by

1 persons independent of the issuer and of any party in inter-
2 est; and (B) in the case of an asset other than a security
3 for which there is a generally recognized market, the fair
4 market value of the asset as determined, in good faith by
5 the trustee or administrator pursuant to the terms of the
6 plan.

7 (19) The term "nonforfeitable" when used with respect
8 to a pension benefit or right means a claim obtained by a
9 participant or his beneficiary to that part of an immediate or
10 deferred pension benefit, which arises from the participant's
11 service, which is unconditional, and which is legally enforce-
12 able against the plan under State or Federal law. For pur-
13 poses of this paragraph, a right to an accrued benefit derived
14 from employer contributions shall not be treated as forfeit-
15 able merely because the plan provides that it is not payable
16 where the participant dies (except in the case of a qualified
17 joint and survivor annuity as provided in section 204 (c)) ;
18 that payment of benefits is suspended during periods
19 when the participant has resumed employment with the
20 employer (or, in the case of a multiemployer plan, has re-
21 sumed employment in the industry before normal retirement
22 age) ; or that plan amendments may be given retroactive
23 application as provided in section 203 (f) or pursuant to
24 section 501 of this Act.

25 (20) The term "security" has the same meaning as

1 such term has under section 2 (1) of the Securities Act of
2 1933 (15 U.S.C. 77b (1)).
3 (21) (A) Except as otherwise provided in subpara-
4 graph (B), a person is a fiduciary with respect to a plan
5 to the extent (i) he exercises any discretionary authority
6 or discretionary control respecting management of such plan
7 or exercises any authority or control respecting management
8 or disposition of its assets, (ii) he renders investment advice
9 for a fee or other compensation, direct or indirect, with
10 respect to any moneys or other property of such plan, or
11 has any authority or responsibility to do so, or (iii) he has
12 any discretionary authority or discretionary responsibility in
13 the administration of such plan.
14 (B) If any money or other property of an employee
15 benefit plan is invested in shares of an investment company
16 registered under the Investment Company Act of 1940,
17 such investment shall not by itself cause such investment
18 company or such investment company's investment adviser
19 or principal underwriter to be deemed to be a "fiduciary"
20 or a "party in interest" as those terms are defined in this
21 title, except insofar as such investment company or its in-
22 vestment adviser or principal underwriter acts in connection
23 with an employee benefit plan covering employees of the
24 investment company, the investment adviser, or its principal
25 underwriter. Nothing contained in this subparagraph shall

1 limit the duties imposed on such investment company, invest-
2 ment adviser, or principal underwriter by any other law.
3 (22) The term "regular retirement benefit" means only
4 that benefit payable under a pension plan at the normal
5 retirement age in the event of service or age related retire-
6 ment and excludes other benefits related to participant dis-
7 ability or plan termination.
8 (23) The term "accrued benefit" means—
9 (A) in the case of a defined benefit plan, the
10 individual's accrued benefit determined under the
11 plan and, except as provided in section 205 (d) (3), ex-
12 pressed in the form of an annual benefit commencing
13 at normal retirement age, or
14 (B) in the case of a plan which is an individual
15 account plan, the balance of the individual's account.
16 (24) The term "normal retirement age" means the
17 earlier of—
18 (A) the time a plan participant attains normal re-
19 tirement age under the plan, or
20 (B) the later of—
21 (i) the time a plan participant attains age
22 65, or
23 (ii) the time a plan participant has completed
24 10 years of participation in the plan.
25 (25) The term "vested liabilities" means the present

value of the immediate or deferred benefits available at regular retirement age for participants and their beneficiaries which are nonforfeitable.

(26) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by the trustee or administrator, assuming an orderly liquidation as of the statement date.

(27) The term "present value", with respect to a liability, means the value adjusted to reflect anticipated events. Such adjustments shall conform to such rules and regulations as the Secretary may provide.

(28) The term "normal service cost" or "normal cost" means the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan.

(29) The term "present value of an annuity certain" means the single sum required to pay $1 monthly annually for "N" years, assuming interest is earned at the rate "i" per annum, which term may be expressed algebraically as follows:

$$1+\left(\frac{1}{1+i}\right)+\left(\frac{1}{1+i}\right)^2+\left(\frac{1}{1+i}\right)^3+\ \cdot\ \cdot\ \cdot\ +\left(\frac{1}{1+i}\right)^{N-1}.$$

(30) The term "accrued liability" means the excess of the present value, as of a particular valuation date of a pension plan, of the projected future benefit costs and adminis-

1 trative expenses for all plan participants and beneficiaries
2 over the present value of future contributions for the normal
3 cost of all applicable plan participants and beneficiaries.
4 (31) The term "unfunded accrued liability" means the
5 excess of the accrued liability, under an actuarial cost method
6 which so provides, over the present value of the assets of a
7 pension plan.
8 (32) The term "advance funding actuarial cost method"
9 or "actuarial cost method" means a recognized actuarial
10 technique utilized for establishing the amount and incidence
11 of the annual actuarial cost of pension plan benefits and
12 expenses. Acceptable actuarial cost methods shall include
13 the accrued benefit cost method (unit credit method), the
14 entry age normal cost method, the individual level premium
15 cost method, the aggregate cost method, the attained age
16 normal cost method, and the frozen initial liability cost
17 method. The terminal funding cost method and the current
18 funding (pay-as-you-go) cost method are not acceptable
19 actuarial cost methods. The Secretary shall issue regulations
20 to further define acceptable actuarial cost methods. Regula-
21 tions for purposes of this paragraph, paragraph (27), and
22 paragraph (38) shall be effective for a plan year beginning
23 after December 31, 1975, only if approved by the Secretary
24 of the Treasury.

1 (33) The term "governmental plan" means a plan es-
2 tablished and maintained for its employees by the Govern-
3 ment of the United States, by the government of any State
4 or political subdivision thereof, or by any agency or instru-
5 mentality of any of the foregoing. The term "governmental
6 plan" also includes any plan to which the Railroad Retire-
7 ment Act of 1935 or 1937 applies, and which is financed
8 by contributions required under that Act.

9 (34) (A) Except as provided in subparagraphs (B)
10 and (C), the term "church plan" means a plan established
11 and maintained by a church or by a convention or associa-
12 tion of churches which is exempt from tax under section
13 501 of the Internal Revenue Code of 1954.

14 (B) The term "church plan" does not include a plan—

15 (i) which is established and maintained primarily
16 for the benefit of employees (or their beneficiaries) of
17 such church or convention or association of churches
18 who are employed in connection with one or more un-
19 related trades or businesses (within the meaning of sec-
20 tion 513 of the Internal Revenue Code of 1954), or

21 (ii) which is a multiemployer plan, if one or more
22 of the employers in the plan is not a church (or a con-
23 vention or association of churches) which is exempt
24 from tax under section 501 of the Internal Revenue
25 Code of 1954.

1 (C) For purposes of this paragraph, if—

2 (i) a plan described in subparagraph (A) was
3 in existence on January 1, 1974, and

4 (ii) such plan on such date covered employees of
5 any organization which is exempt from tax under sec-
6 tion 501 of the Internal Revenue Code of 1954 and
7 which is an agency of the church or convention or
8 association of churches which established and maintained
9 the plan,

10 then the employees of such agency who are at any time
11 covered by such plan shall be treated as employees whose
12 employer is such church or convention or association of
13 churches, as the case may be.

14 (35) The term "individual account plan" means a
15 pension plan which provides for an individual account for
16 each participant and for benefits based solely upon the
17 amount contributed to the participant's account, and any
18 income, expenses, gains and losses, and any forfeitures of
19 accounts of other participants which may be allocated to
20 such participant's account.

21 (36) The term "defined benefit plan" means a pension
22 plan other than an individual account plan.

23 (37) The term "supplementary plan" means a pension
24 plan which covers only participants each of whom is covered
25 by one or more primary plans to which parts 2 and 3 of

1 subtitle B of this title apply. For purposes of this para-
2 graph, the term "primary plan" means a pension plan which
3 is designed to provide a life annuity (or equivalent annuity)
4 as determined by the Secretary, which commences not later
5 than age 65 and which provides an annual benefit (or the
6 equivalent) in an amount not less than 2.0 percent of the
7 final five-year average annual compensation for the partici-
8 pant times the number of his years of covered service (deter-
9 mined under regulations of the Secretary).
10 (38) (A) The term "multiemployer plan" means a
11 plan—
12 (i) to which more than one employer is required
13 to contribute,
14 (ii) which is maintained pursuant to a collective
15 bargaining agreement between employee representatives
16 and more than one employer,
17 (iii) under which the amount of contributions made
18 under the plan for a plan year by each employer making
19 such contributions is less than 50 percent of the aggre-
20 gate amount of contributions made under the plan for
21 that plan year by all employers making such contribu-
22 tions, and
23 (iv) which satisfies such other requirements as the
24 Secretary may by regulations prescribe.

1 (B) For purposes of this paragraph—

2 (i) If a plan is a multiemployer plan within the
3 meaning of subparagraph (A) for any plan year, clause
4 (iii) of subparagraph (A) shall be applied by substi-
5 tuting "75 percent" for "50 percent" for each subse-
6 quent plan year until the first plan year following a plan
7 year in which the plan had one employer who made con-
8 tributions of 75 percent or more of the aggregate amount
9 of contributions made under the plan for that plan year
10 by all employers making such contributions.

11 (ii) All corporations which are members of a con-
12 trolled group of corporations (within the meaning of sec-
13 tion 1563 (a) of the Internal Revenue Code of 1954,
14 determined without regard to section 1563 (e) (3) (C)
15 of such Code) shall be deemed to be one employer.

16 (39) The term "investment manager" means any
17 fiduciary (other than a trustee or administrator) who
18 has the power to manage, acquire, or dispose of any asset
19 of a plan and who—

20 (A) is registered as an investment adviser under
21 the Investment Advisers Act of 1940; or is a bank, as
22 defined in that Act, and

23 (B) has acknowledged in writing that he is a
24 fiduciary with respect to the plan.

1 Subtitle B—Regulatory Provisions

2 PART 1—FIDUCIARY RESPONSIBILITY AND

3 DISCLOSURE

4 COVERAGE

5 SEC. 101. (a) Except as provided in subsection (b)
6 this part shall apply to any employee benefit plan if it is
7 established or maintained (1) by any employer engaged in
8 commerce or in any industry or activity affecting commerce
9 or (2) by any employee organization in which employees
10 engaged in commerce or in any industry or activity affecting
11 commerce participate or (3) by both.

12 (b) This part shall not apply to an employee benefit
13 plan if—

14 (1) such plan is a governmental plan (as defined
15 in section 3 (33) ;

16 (2) such plan is a church plan (as defined in sec-
17 tion 3 (34)) with respect to which no election has been
18 made under section 201 (c) ;

19 (3) such plan was established and is maintained
20 solely for the purpose of complying with applicable
21 workmen's compensation laws or unemployment com-
22 pensation disability insurance laws;

23 (4) such plan is established and maintained outside
24 the United States primarily for the benefit of persons
25 who are not citizens of the United States, or

26 (5) such plan is unfunded and is maintained

1 by an employer primarily for the purpose of providing
2 deferred compensation for a select group of manage-
3 ment or highly compensated employees.

4 DUTY OF DISCLOSURE AND REPORTING

5 SEC. 102. (a) The administrator of an employe benefit
6 plan shall cause to be published in accordance with section
7 105 to each participant or beneficiary covered thereunder
8 (1) a description of the plan and (2) the information
9 described in sections 105 (b) (3) and 106 (e). Such descrip-
10 tion and the annual report of the plan shall contain the
11 information required by sections 103 and 104 of this Act,
12 shall be published in accordance with section 105, and shall
13 be in such form and detail as necessary to fully and fairly
14 disclose all pertinent facts.

15 (b) The Secretary shall require the filing of special
16 terminal reports respecting an employee pension benefit
17 plan which is winding up its affairs, and he may require
18 such a report respecting any employee welfare benefit plan
19 which is winding up its affairs. Such reports shall be on such
20 forms and filed in such manner as the Secretary may by reg-
21 ulation prescribe. A report respecting a pension plan shall be
22 required to be filed regardless of the number of participants
23 remaining in the plan.

24 (c) The Secretary may by regulation require that the
25 administrator of any employee benefit plan furnish to each
26 participant or his surviving beneficiary a statement of the

1 rights of participants and beneficiaries under this title.

2 DESCRIPTION OF THE PLAN

3 SEC. 103. (a) A description of any employee benefit
4 plan shall be published as required herein within one hundred
5 and twenty days after the establishment of such plan or
6 within one hundred and twenty days after such plan becomes
7 subject to the part, whichever is later.

8 (b) The description of the plan shall be comprehensive
9 and shall be written in a manner calculated to be understood
10 by the average plan participant and shall include the name
11 and type of administration of the plan; the name and address
12 of the administrator; names, titles, and addresses of any
13 trustee or trustees (if they are persons different from the
14 administrator); a description of any relevant collective-bar-
15 gaining agreement in which the plan is mentioned; the
16 plan's requirements respecting eligibility for participation
17 and benefits; the schedule of benefits; a description of the
18 provisions providing for nonforfeitable pension benefits; the
19 source of the financing of the plan and the identity of any
20 organization through which benefits are provided; whether
21 the records of the plan are kept on a calendar year basis, or
22 on a policy or other fiscal year basis, and if on the latter
23 basis, the date of the end of such policy or fiscal year; the
24 procedures to be followed in presenting claims for benefits
25 under the plan and the remedies available under the plan
26 for the redress of claims which are denied in whole or in

1 part. All amendments to the plan shall be included in the
2 description on and after the effective date of such amend-
3 ments.

4 ANNUAL REPORTS

5 SEC. 104. (a) (1) An annual report shall be published
6 with respect to any employee benefit plan to which this part
7 applies. Such report shall be published as required under
8 section 105, within two hundred and seventy days after the
9 end of the calendar, policy, or fiscal year on which the rec-
10 ords of the plan are kept (hereafter in this title referred to
11 as "plan year" or "fiscal year of the plan").

12 (2) If some or all of the benefits under the plan are
13 provided by an insurance carrier or other organization, such
14 carrier or organization shall certify to the administrator of
15 such plan, within one hundred and eighty days after the
16 end of the fiscal year of the plan, such information as is
17 necessary to enable such administrator to comply with the
18 requirements of this title. If some or all of the information
19 necessary to enable the administrator to comply with the re-
20 quirements of this title is maintained by one or more persons
21 described in section 3(16)(B) (i), (ii), or (iii), such
22 person or persons shall transmit such information to the ad-
23 ministrator within one hundred and eighty days after the end
24 of the fiscal year of the plan.

25 (3) (A) Except as provided in subparagraph (B), the

1 administrator of an employee benefit plan shall engage, on
2 behalf of all plan participants, an independent qualified pub-
3 lic accountant, who shall conduct such an examination of the
4 financial statements of the plan as he may deem necessary to
5 enable him to form an opinion as to whether the financial
6 statements required to be included in the annual report by
7 subsection (b) of this section are presented fairly in con-
8 formity with generally accepted accounting principles
9 applied on a basis consistent with that of the preceding year.
10 Such examination shall be conducted in accordance with
11 generally accepted auditing standards, and shall involve such
12 tests of the books and records of the plan as are considered
13 necessary by the independent qualified public accountant. The
14 independent qualified public accountant shall also submit a
15 report as to whether the supplementary financial data speci-
16 fied in subsection (b) (3) of section 105 presents fairly in all
17 material respects the information contained therein when
18 considered in conjunction with the financial statements taken
19 as a whole. The opinion by the independent qualified public
20 accountant shall be made a part of the annual report.
21 (B) The opinion required by subparagraph (A) need
22 not be expressed as to any statements prepared by a bank or
23 similar institution or insurance carrier as required by sub-
24 paragraph (G) of paragraph (b) (3) of this section if such
25 statements are certified by the bank, similar institution, or

1 insurance carrier as accurate and are made a part of the
2 annual report.
3 (C) For purposes of subparagraph (A) of this para-
4 graph, section 105 (a) (3), and section 114 (a), the term
5 "qualified public accountant" means—
6 (i) a person who is a certified public accountant,
7 certified by a regulatory authority of a State,
8 (ii) a person who is a licensed public accountant,
9 licensed by a regulatory authority of a State, or
10 (iii) any other person who meets, in the opinion
11 of the Secretary, standards of education and experience
12 which are representative of the highest prescribed by
13 the licensing authorities of the several States which
14 provide for the continuing licensing of public account-
15 ants and which are prescribed by the Secretary in
16 appropriate regulations;
17 except that if the Secretary deems it necessary in the public
18 interest, he may prescribe by regulation higher standards
19 than those required for the practice of public accountancy
20 by the regulatory authorities of the States, and a person
21 shall be considered a qualified public accountant for purposes
22 of subparagraph (A), section 105 (a) (3), and section 114
23 (a) only if he meets such standards.

1 (4) (A) The administrator of an employee benefit plan
2 subject to the reporting requirement of subsection (d) of this
3 section shall engage, on behalf of all plan participants, an
4 enrolled actuary who shall supervise the computation of the
5 "present value of accrued benefits" and "accrued benefits"
6 required under subsection (b) (2) of this section and shall
7 supervise the preparation of the materials comprising the
8 actuarial statement required under subsections (d) and (g)
9 of this section.

10 (B) The enrolled actuary shall utilize such assumptions
11 and techniques as are necessary to enable him to form an
12 opinion as to whether the contents of the matters reported
13 under subsection (d) of this section—

14 (i) are reasonably related to the experience of the
15 plan and to reasonable expectations; and

16 (ii) utilize assumptions which in combination, offer
17 his single best estimate of anticipated experience under
18 the plan.

19 The opinion by the enrolled actuary shall be made with
20 respect to, and shall be made a part of, each annual report.

21 (C) For purposes of subparagraph (A) of this para-
22 graph, section 105 (a) (3), and section 114 (a), the term
23 "enrolled actuary" means an actuary enrolled under this sub-
24 paragraph. The Secretary shall, by regulations, establish
25 reasonable standards and qualifications for individuals per-

1 forming actuarial services described in subparagraph (A)
2 and section 105(a)(3). Upon application by any indi-
3 vidual, the Secretary shall enroll such individual if the Sec-
4 retary finds that such individual satisfies such standards and
5 qualifications. With respect to individuals applying for en-
6 rollment before January 1, 1976, such standards and quali-
7 fications shall include a requirement for an appropriate
8 period of responsible actuarial experience or of responsible
9 experience in the administration of pension plans. With
10 respect to individuals applying for enrollment on or after
11 January 1, 1976, such standards and qualifications shall
12 include—
13 (i) education and training in actuarial mathematics
14 and methodology, as evidenced by—
15 (I) a degree in actuarial mathematics or its
16 equivalent from an accredited college or university,
17 or
18 (II) successful completion of an examination in
19 actuarial mathematics and methodology to be given
20 by the Secretary, or
21 (III) successful completion of other actuarial
22 examinations deemed adequate by the Secretary,
23 and
24 (ii) an appropriate period of responsible actuarial
25 experience.

1 The Secretary may, after notice and an opportunity for a
2 hearing, suspend or terminate the enrollment of an individual
3 under this subparagraph if the Secretary finds that such in-
4 dividual does not satisfy the requirements for enrollment
5 which were in effect at the time of his application for enroll-
6 ment. Regulations prescribed for purposes of this subpara-
7 graph shall be effective after December 31, 1975, only if
8 approved by the Secretary of the Treasury.

9 (b) A report under this section shall include a financial
10 statement containing the following information:

11 (1) With respect to an employee welfare benefit plan:
12 a statement of assets and liabilities; a statement of revenues
13 and expenses for the period aggregated by general sources
14 and applications; a statement of changes in fund balance;
15 and a statement of changes in financial position. In the notes
16 to financial statements, disclosures concerning the following
17 items shall be considered by the accountant: a description of
18 the plan including any significant changes in the plan made
19 during the period and the impact of such changes on benefits;
20 a description of material lease commitments and contingent
21 liabilities; a description of agreements and transactions with
22 persons known to be parties in interest; a general description
23 of priorities upon termination of the plan; information con-
24 cerning whether or not a tax ruling or determination letter
25 has been obtained; and any other matters necessary to fairly

1 present the financial statements of a particular welfare
2 benefit fund.
3 (2) With respect to an employee pension benefit plan:
4 a statement of assets and liabilities including with respect to
5 any employee benefit plan subject to the reporting require-
6 ments of subsection (d) of this section the estimated actuari-
7 ally determined present value of accrued benefits to be paid
8 under the plan as calculated by an enrolled actuary and ag-
9 gregated by the termination distribution categories enumer-
10 ated in section 112; and a statement of changes in net assets
11 available for plan benefits which shall include details of
12 revenues and expenses and other changes aggregated by
13 general source and application. In the notes to financial
14 statements, disclosures concerning the following items shall
15 be considered by the accountant: a description of the plan in-
16 cluding any significant changes in the plan made during the
17 period; the funding policy (including policy with respect to
18 prior service cost), and any changes in such policies during
19 the year; the most recent valuation date used to compute the
20 present value of accrued benefits and the actuarial cost meth-
21 ods and assumptions; a description of any significant changes
22 in plan benefits made during the period and the impact of
23 such changes on the present value of accrued benefits; a de-
24 scription of material lease commitments, other commitments,
25 and contingent liabilities; agreements and transactions with

1 persons known to be parties in interest; a general description
2 of priorities upon termination of the plan; information con-
3 cerning whether or not a tax ruling or determination letter
4 has been obtained; and any other matters necessary to fully
5 and fairly present the financial statements of a particular
6 pension benefit fund.

7 (3) With respect to all employee benefit plans:

8 (A) a statement of the assets and liabilities of the
9 fund aggregated by categories and valued at their current
10 value, as well as the same data, displayed in comparative
11 form for the end of the previous fiscal year of the plan;

12 (B) a statement of receipts and disbursements dur-
13 ing the preceding twelve-month period aggregated by
14 general sources and applications;

15 (C) a schedule of all assets held for investment
16 purposes aggregated and identified by issuer, borrower,
17 or lessor or similar party to the transaction, maturity
18 date, rate of interest, collateral, par or maturity value,
19 cost, and current value;

20 (D) a schedule of each transaction involving a per-
21 son known to be party in interest, the identity of such
22 party in interest and his relationship to the plan, em-
23 ployer, employee, or other person, a description of each
24 asset to which the transaction relates; the purchase or
25 selling price in case of a sale or purchase, the rental in

case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans made from the fund which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule: the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule: the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other

1 party in interest, the terms of the lease regarding rent,
2 taxes, insurance, repairs, expenses, and renewal options;
3 the date the leased property was purchased and its cost,
4 the date the property was leased and its approximate
5 value at such date, the gross rental receipts during the
6 reporting period, expenses paid for the leased property
7 during the reporting period, the net receipts from the
8 lease, the amounts in arrears, and a statement as to what
9 steps have been taken to collect amounts due or other-
10 wise remedy the default;
11 (G) if some or all of the assets of a plan or plans
12 are held in a common or collective trust maintained by
13 a bank or similar institution or in a separate account
14 maintained by an insurance carrier or a separate trust
15 maintained by a bank as trustee, the report shall include
16 the most recent annual statement of assets and liabilities
17 of such common or collective trust, and in the case of a
18 separate account or a separate trust, such other informa-
19 tion as is required by the administrator in order to com-
20 ply with this subsection. In such case the bank or similar
21 institution or insurance carrier shall certify to the admin-
22 istrator of such plan or plans, within one hundred and
23 eighty days after the end of each fiscal year of the plan
24 the information necessary to enable the plan administra-
25 tor to comply with the requirements of this part; and

1 (II) a schedule of each transaction (or transac-
2 tions) involving an amount (or the aggregate amount
3 resulting from multiple transactions with or in conjunc-
4 tion with a person during the plan year) which exceeds
5 the lesser of $300,000 or 3 per centum of the value of
6 the fund, the name of such person and a description of
7 each asset to which the transaction applies; the pur-
8 chase or selling price in case of a sale or purchase, the
9 rental in case of a lease, or the interest rate and ma-
10 turity date in case of a loan; expenses incurred in con-
11 nection with the transaction; the cost of the asset, the
12 current value of the asset, and the net gain (or loss)
13 on each transaction.
14 (c) The administrator shall furnish as a part of report
15 under this section the following information: the average
16 number of employees covered by the plan; the name and
17 address of each fiduciary; the name of each person who re-
18 ceived compensation in excess of $5,000 from the fund
19 during the preceding year for services rendered to the plan
20 or its participants, the amount of such compensation, the
21 nature of his services to the plan or its participants, his rela-
22 tionship to the employer of the employees covered by the
23 plan, or the employee organization, and any other office,
24 position, or employment he holds with any party in interest;
25 and an explanation of the reason for any change in appoint-

1 ment of trustee, qualified public accountant, insurance car-
2 rier, actuary, administrator, investment manager, or
3 custodian.

4 (d) With respect to an employee pension benefit plan
5 (other than (A) a profit sharing, savings, or other plan,
6 which is an individual account plan, or (B) a plan described
7 in section 301 (d)), a report under this section for a plan
8 year to which part 2 or part 3 of this subtitle (or both)
9 apply shall include an actuarial statement applicable to the
10 plan year which shall include the following:

11 (1) The number of years the plan has been in
12 effect, the date of the plan year, and the date of the
13 actuarial valuation applicable to the plan year for which
14 the report is filed. An actuarial valuation shall be made
15 no less frequently than every three years.

16 (2) The date and amount of the contribution (or
17 contributions) made by the plan for the plan year for
18 which the report is filed and contributions for prior plan
19 years not previously reported.

20 (3) A complete copy of the actuarial report, includ-
21 ing the following information applicable to the plan year
22 for which the report is filed: the amount of the minimum
23 contribution, the normal costs, accrued liabilities, present
24 value of accrued nonforfeitable benefits; value of assets;
25 an identification of benefits not included in the calcula-

1 tions; and a statement of the other facts and actuarial
2 assumptions used in the calculation of the minimum con-
3 tribution required under section 302 and a justification
4 for any change in actuarial assumptions or cost methods.
5 (4) The number of participants and beneficiaries,
6 both retired and nonretired covered by the plan.
7 (5) The current value of the assets accumulated in
8 the fund, and the present value of the assets of the
9 plan used by the actuary in any computation of the
10 amount of contributions to the plan required under
11 section 302 and a statement explaining the basis of
12 such asset valuation.
13 (6) The present value of all of the plan's liabilities
14 for nonforfeitable pension benefits allocated by the termi-
15 nation prority categories as set forth in section 112 (b) ;
16 and the actuarial assumptions used in these computa-
17 tions. The Secretary shall establish regulations defining
18 (for purposes of this section) "termination priority cat-
19 egories" and acceptable methods, including approxi-
20 mate methods, for allocating the plan's liabilities to such
21 termination priority categories.
22 (7) The ratio of (A) the current value of the assets
23 (as set forth in paragraph (5)) allocated to each termi-
24 nation priority category as set forth in section 112 (b)

1 to (B) the liabilities (as set forth in paragraph (6))
2 allocated to each such termination priority category.
3 (8) In the case of a plan to which section 302
4 applies a statement of the amount, if any, by which
5 the aggregate contributions made since section 302 first
6 applied to the plan either exceed or fall below the
7 aggregate contributions required in order for the plan to
8 meet the funding requirements of section 302.
9 (9) A copy of the opinion required by subsection
10 (a) (4).
11 (10) Such other information as may be necessary
12 to fully and fairly disclose the actuarial positions of the
13 fund.
14 The actuary shall make an actuarial valuation of the plan for
15 every third plan year, unless he determines that a more fre-
16 quent valuation is necessary to support his opinion under sub-
17 section (a) (4) of this section.
18 (e) If some or all of the benefits under the plan are
19 purchased from and guaranteed by an insurance company, a
20 report under this section shall include a statement from
21 such insurance company covering the fiscal year and
22 enumerating—
23 (1) total premiums received from the plan;
24 (2) the amount paid in the form of benefits;

1 (3) the amount charged on account of administra-
2 tive expense;
3 (4) the amount of any commissions or any other
4 acquisition costs paid by the insurance company and to
5 whom paid; and
6 (5) the amount held to pay future benefits.
7 (f) If the only assets from which claims against an
8 employee benefit plan may be paid are the general assets of
9 an employer or an employee organization, the report shall
10 include (for each of the past five years) the benefits paid and
11 the average number of employees eligible for participation.
12 (g) In the event of termination of any employee pen-
13 sion benefit plan the annual report of such plan for the year
14 shall include any supplementary information required to be
15 filed with the Secretary by section 102(b).
16 PUBLICATION
17 SEC. 105. (a) (1) The administrator of any employee
18 benefit plan subject to this part shall, within 270 days after
19 the close of each fiscal year of the plan, file with the Secre-
20 tary a copy of the plan description and each annual report.
21 The Secretary shall make copies of such descriptions and
22 annual reports available for inspection in the public docu-
23 ment room of the Department of Labor. The Secretary—
24 (A) shall exempt from the annual filing require

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1 ment of this paragraph any employee benefit plan with
2 fewer than twenty-six participants,
3 (B) may exempt from such filing requirement any
4 other class or type of employee benefit plan with fewer
5 than one hundred participants, if the Secretary finds
6 that the application of such requirement to such other
7 plans is not required to implement the purposes of this
8 title, and
9 (C) may by regulation, as to any class or type
10 of employee welfare benefit plan, grant an exemption
11 from all or part of the reporting, disclosure, and publi-
12 cation requirements of this part.
13 (2) The Secretary may reject any filing under this
14 section:
15 (A) after notice, hearing, and a determination on
16 the record by the Secretary that such filing is incom-
17 plete for purposes of this part; or
18 (B) if he finds, after notice and opportunity for
19 presentation of views, that there is any material quali-
20 fication by an accountant or actuary contained in an
21 opinion submitted pursuant to section 104 (a) (3) (A)
22 or section 104 (a) (4) (B).
23 (3) If the Secretary rejects a filing of a report under
24 paragraph (2), if a revised report satisfactory to the Secre-
25 tary is not submitted within forty-five days after the Secretary

1 makes his determination under paragraph (2) to reject the
2 filing, and if the Secretary deems it in the best interest of the
3 participants, he may take any one or more of the following
4 actions:

5 (A) Retain an independent qualified public account-
6 ant (as defined in section 104(a) (3) (C)) on behalf
7 of the participants to perform an audit.

8 (B) Retain an enrolled actuary (as defined in sec-
9 tion 104(a) (4) (C) of this Act) to make an actuarial
10 report.

11 (C) Bring a civil action for such legal or equitable
12 relief as may be appropriate to account for or safeguard
13 the assets of the plan.

14 The Administrator shall permit such accountant, auditor, or
15 actuary to inspect whatever books and records of the plan
16 are necessary for such audit. The plan shall be liable to the
17 Secretary for the expenses for such audit or report; and the
18 Secretary may bring an action against the plan in any court
19 of competent jurisdiction to recover such expenses.

20 (b) Publication of the plan descriptions and annual
21 reports required by this part shall be made to participants
22 and beneficiaries of the particular plan as follows:

23 (1) The administrator shall furnish to each plan
24 participant or his beneficiaries a copy of the plan descrip-

1 tion (including all amendments or modifications there-
2 to). Such description shall be furnished—
3 (A) to a plan participant within thirty days
4 after he commences covered employment (or in
5 the case of a plan to which more than one employer
6 is required to contribute, within ninety days after
7 he commences covered employment), and
8 (B) to all plan participants at least once every
9 five years.
10 If there is any material modification in the terms of the
11 plan, a description of such modification shall be furnished
12 not later than one year after the modification takes
13 effect.
14 (2) The administrator shall make copies of the
15 latest annual report (except the information described
16 in sections 106(a) and (c)) and the bargaining agree-
17 ment, trust agreement, contract, or other instruments
18 under which the plan was established and is operated
19 available for examination by any plan participant or
20 beneficiary in the principal office of the administrator
21 and in such other places as may be necessary to fully
22 and fairly disclose all pertinent facts to all participants.
23 (3) Within two hundred and seventy days after the
24 close of the fiscal year of the plan, the administrator shall
25 furnish to each participant, or his beneficiaries, a copy of
26 the statements and schedules, for such fiscal year, de-

1 scribed in subparagraphs (A) and (B) of paragraph
2 104(b)(3) and paragraphs (5), (6), and (7) of sub-
3 section 104(d), and such other material as is necessary
4 to fairly summarize the latest annual report.

5 (4) The administrator shall, upon written re-
6 quest of any participant or beneficiary, furnish a com-
7 plete copy of the latest annual report (except the in-
8 formation described in sections 106(a) and (c)), the
9 bargaining agreement, trust agreement, contract, or
10 other instruments under which the plan is established
11 and operated. The administrator may make a reasonable
12 charge to cover the cost of furnishing such complete
13 copies. The Secretary may by regulation prescribe the
14 maximum amount which will constitute a reasonable
15 amount under this paragraph.

16 REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

17 SEC. 106. (a) Each pension plan which files a report
18 under section 105(a) for a plan year beginning after Decem-
19 ber 31, 1975, shall include in such report the following
20 information:

21 (1) The name and social security number of each
22 participant in the plan—

23 (A) who, during such plan year, separated
24 from the service covered by the plan,

25 (B) who is entitled to a deferred nonforfeitable

1 benefit under the plan as of the end of such plan
2 year, and
3 (C) with respect to whom retirement bene-
4 fits were not paid under the plan during such plan
5 year.
6 (2) The nature, amount, and form of the
7 deferred nonforfeitable benefit to which such participant
8 is entitled.
9 (3) Such other information as the Secretary may
10 require.
11 At the time he files the information under this subsection,
12 the administrator shall furnish evidence satisfactory to the
13 Secretary that he has complied with the requirement con-
14 tained in subsection (e).
15 (b) Any administrator required to submit information
16 under subsection (a) shall also notify the Secretary, at such
17 time as may be prescribed by regulations, of—
18 (1) any change in the name of the plan,
19 (2) any change in the name or address of the
20 administrator,
21 (3) the termination of the plan, or
22 (4) the merger or consolidation of the plan with
23 any other plan or its division into two or more plans.
24 (c) To the extent provided in regulations prescribed by

1 the Secretary, the Secretary may receive from—

2 (1) any plan to which subsection (a) applies, and

3 (2) any other plan (including any governmental

4 plan or church plan),

5 such information (including information relating to plan

6 years beginning before January 1, 1974) as the administra-

7 tor may wish to file with respect to the deferred nonforfeit-

8 able benefit rights of any participant separated from the serv-

9 ice covered by the plan during any plan year.

10 (d) The Secretary shall transmit copies of any state-

11 ments, notifications, reports, or other information obtained

12 by him under this section to the Secretary of Health, Edu-

13 cation, and Welfare.

14 (e) Each plan administrator required to submit infor-

15 mation under subsection (a) shall, before the expiration of

16 the time prescribed for the filing of such information, also

17 furnish to each participant described in subsection (a) (1)

18 an individual statement setting forth the information with re-

19 spect to such participant required to be contained in informa-

20 tion submitted to the Secretary under subsection (a) (2).

21 (f) (1) The Secretary, after consultation with the Sec-

22 retary of Health, Education, and Welfare, may prescribe

23 such regulations as may be necessary to carry out the pro-

24 visions of this section. Any such regulations shall be effective

1 with respect to plan years beginning after December 31,
2 1975, only if approved by the Secretary of the Treasury.
3 (2) This section shall apply to a plan to which more
4 than one employer is required to contribute only to the extent
5 provided in regulations prescribed under this subsection.

6 REPORTS MADE PUBLIC INFORMATION

7 SEC. 107. (a) Except as provided in subsection (b), the
8 contents of the descriptions and reports filed with the
9 Secretary pursuant to this part shall be public information,
10 and the Secretary shall make any such information and data
11 available for inspection in the public document room of the
12 Department of Labor. The Secretary may use the information
13 and data for statistical and research purposes, and compile
14 and publish such studies, analyses, reports, and surveys based
15 thereon as he may deem appropriate.
16 (b) Information described in section 106(a) and
17 106(c) with respect to a participant may be disclosed
18 only to the extent that information respecting that partici-
19 pant's benefits under title II of the Social Security Act
20 may be disclosed under such Act.

21 RETENTION OF RECORDS

22 SEC. 108. Every person subject to a requirement to file
23 any description or report or to certify any information there-
24 for under this title or who would be subject to such a require-
25 ment but for an exemption under section 105(a)(1)(A),

1 (B), or (C) of this title shall maintain records on the matters
2 of which disclosure is required which will provide in sufficient
3 detail the necessary basic information and data from which
4 the documents thus required may be verified, explained, or
5 clarified, and checked for accuracy and completeness, and
6 shall include vouchers, worksheets, receipts, and applicable
7 resolutions, and shall keep such records available for exam-
8 ination for a period of not less than six years after the filing
9 date of the documents based on the information which they
10 contain, or six years after the date on which such documents
11 would have been filed but for an exemption under section
12 105(a)(1) (A), (B), or (C).

13 RELIANCE ON ADMINISTRATIVE INTERPRETATIONS

14 SEC. 109. In any criminal proceeding under section
15 503 based on any act or omission in alleged violation of
16 sections 102 through 110 of this Act, no person shall be
17 subject to any liability or punishment for or on account of
18 the failure of such person to (1) comply with sections 102
19 through 110 of this Act if he pleads and proves that the
20 act or omission complained of was in good faith, in con-
21 formity with, and in reliance on any regulation or written
22 ruling of the Secretary, or (2) publish and file any informa-
23 tion required by any provision of this part if he pleads and
24 proves that he published and filed such information in good
25 faith, and in conformity with any regulation or written ruling

of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

BONDING

SEC. 110. (a) Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan shall be bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, and

(2) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State;

1 (B) is authorized under such laws to exercise
2 trust powers or to conduct an insurance business;
3 (C) is subject to supervision or examination by
4 Federal or State authority; and
5 (D) has at all times a combined capital and sur-
6 plus in excess of such a minimum amount as may
7 be established by regulations issued by the Secre-
8 tary, which amount shall be at least $500,000.
9 The amount of such bond shall be fixed at the beginning of
10 each fiscal year of the plan. Such amount shall be not less
11 than 10 per centum of the amount of funds handled, deter-
12 mined as provided in this section; but except that any such
13 bond shall be in at least the amount of $1,000 and no such
14 bond shall be required in an amount in excess of $500,000,
15 except that the Secretary, after due notice and opportunity
16 for hearing to all interested parties, and after consideration
17 of the record, may prescribe an amount in excess of $500,000,
18 which in no event shall exceed 10 per centum of the funds
19 handled. For purposes of fixing the amount of such bond, the
20 amount of funds handled shall be determined by the funds
21 handled by the person, group, or class to be covered by such
22 bond and by their predecessor or predecessors, if any, during
23 the preceding reporting year, or if the plan has no preceding
24 reporting year, the amount of funds to be handled during the

1 current reporting year by such person, group, or class, esti-
2 mated as provided in regulations of the Secretary. Such bond
3 shall provide protection to the plan against loss by reason of
4 acts of fraud or dishonesty on the part of such administrator,
5 officer, or employee, directly or through connivance with
6 others. Any bond shall have as surety thereon a corporate
7 surety company which is an acceptable surety on Federal
8 bonds under authority granted by the Secretary of the Treas-
9 ury pursuant to sections 6 through 13 of title 6, United
10 States Code. Any bond shall be in a form or of a type ap-
11 proved by the Secretary, including individual bonds or
12 schedule or blanket forms of bonds which cover a group or
13 class.

14 (b) It shall be unlawful for any administrator, officer,
15 or employee to whom subsection (a) applies, to receive,
16 handle, disburse, or otherwise exercise custody or control
17 of any of the funds or other property of any employee
18 benefit plan, without being bonded as required by subsec-
19 tion (a) and it shall be unlawful for any administrator,
20 officer, or employee of such plan, or any other person having
21 authority to direct the performance of such functions, to
22 permit such functions, or any of them, to be performed
23 by any such person, with respect to whom the requirements
24 of subsection (a) have not been met.

25 (c) It shall be unlawful for any person to procure

1 any bond required by subsection (a) from any surety or
2 other company or through any agent or broker in whose
3 business operations such plan or any party in interest in
4 such plan has any control or significant financial interest,
5 direct or indirect.

6 (d) Nothing in any other provision of law shall require
7 any person, required to be bonded as provided in subsection
8 (a) because he handles funds or other property of an em-
9 ployee benefit plan, to be bonded insofar as the handling
10 by such person of the funds or other property of such plan
11 is concerned.

12 (e) The Secretary shall from time to time issue such
13 regulations as may be necessary to carry out the provisions
14 of this section. When, in the opinion of the Secretary, the
15 administrator of a plan offers adequate evidence of the
16 financial responsibility of the plan, or that other bonding
17 requirements would provide adequate protection of the
18 beneficiaries and participants, he may exempt such plan
19 from the requirements of this section.

20 FIDUCIARY RESPONSIBILITY

21 SEC. 111. (a) (1) Every employee benefit plan shall be
22 established pursuant to a written plan, which shall identify
23 and appoint (or provide for the identification and appoint-
24 ment of) an administrator or administrators. The adminis-
25 trator (in the case of a plan with a single administrator) or

1 the administrators (in the case of a plan with more than one
2 administrator) shall be deemed to have full authority and
3 responsibility for the operation of such employee benefit plan
4 including the authority (i) to establish a funding policy and
5 method consistent with the objectives of the plan, and (ii)
6 to amend such plan (except with respect to contribution
7 rates) where such an amendment is necessary to meet the
8 requirements of this title or where such an amendment
9 is necessary to protect the interests of the participants.
10 Except as provided in section 112 of this title or in para-
11 graph (2) of this subsection, the assets of such a plan shall
12 never inure to the benefit of any employer and shall be held
13 for the exclusive purposes of providing benefits to partici-
14 pants in the plan and their beneficiaries and defraying rea-
15 sonable expenses of administering the plan. Nothing in this
16 title shall prohibit any person or group of persons from serv-
17 ing as both trustee and administrator for any plan. Notwith-
18 standing any provision of this paragraph, a plan may pro-
19 vide that—

20 (A) an administrator or trustee may employ any
21 person to provide investment advice with regard to any
22 assets of a plan; and

23 (B) an administrator, or a trustee at the written
24 direction of the administrator, may appoint an invest-
25 ment manager or managers to manage (including the

1 power to acquire and dispose of) any assets of a plan.
2 Where an investment manager or managers have been
3 so appointed—
4 (i) no trustee shall be liable for the acts or
5 omissions to act of such investment manager or man-
6 agers, or be under an obligation to invest or other-
7 wise manage any asset of the plan which is subject
8 to the management of the investment manager; and
9 (ii) no administrator shall be liable for the acts
10 or omissions to act of such investment manager or
11 managers if such administrator meets the require-
12 ments of subsection (b) (1) of this section in select-
13 ing and retaining such investment manager.
14 Nothing in this subparagraph shall relieve any trustee
15 or administrator of any liability under this section for
16 any act of such trustee or administrator.
17 (2) A contribution—
18 (A) which is made by an employer as a mistake
19 of fact, or
20 (B) which is conditioned upon approval by the
21 Secretary of the Treasury or his delegate of the deduc-
22 tion of the contribution under section 401 of the Internal
23 Revenue Code of 1954, in a case in which the deduc-
24 tion is not approved,

1 may be returned to the employer within one year after the
2 payment of the contribution.
3 (b) (1) A fiduciary shall discharge his duties with re-
4 spect to a plan solely in the interest of the participants and
5 beneficiaries and—
6 (A) for the exclusive purpose of:
7 (i) providing benefits to participants and their
8 beneficiaries; and
9 (ii) defraying reasonable expenses of adminis-
10 tering the plan;
11 (B) with the care, skill, prudence, and diligence
12 under the circumstances then prevailing that a prudent
13 man acting in a like capacity and familiar with such
14 matters would use in the conduct of an enterprise of a
15 like character and with like aims;
16 (C) by diversifying the investments so as to mini-
17 mize the risk of large losses unless under the circum-
18 stances it is prudent not to do so; and
19 (D) in accordance with the documents and instru-
20 ments governing the plan insofar as is consistent with this
21 title.
22 (2) Except as permitted under subsection (a) (2) of
23 this section, a fiduciary with respect to a plan shall not—
24 (A) deal with the assets of the plan for his own
25 account,

1 (B) in his individual or any other capacity act in
2 any transaction involving the plan on behalf of a party
3 whose interests are adverse to the interests of the plan
4 or the interests of its participants or beneficiaries,
5 (C) receive any consideration for his own personal
6 account from any party dealing with such plan in con-
7 nection with a transaction involving the assets of the
8 plan,
9 (D) permit the transfer of any property of the
10 plan to or its use by any person known to be a party in
11 interest, except in return for no less than adequate con-
12 sideration, or
13 (E) permit the acquisition of any property or
14 services from any person known to be a party in in-
15 terest, except in exchange for no more than adequate
16 consideration.
17 (3) In the case of an individual account plan which is
18 a profit-sharing, stock bonus, or thrift and savings plan, or
19 which is a money purchase plan designed to invest primarily
20 in securities described in subparagraph (B) of this paragraph,
21 the diversification requirement of subparagraph (C) of
22 paragraph (1) of this subsection and the prudence require-
23 ment (to the extent that it requires diversification) of sub-
24 paragraph (B) of paragraph (1) of this subsection is not
25 violated by acquisition or retention of:
26 (A) Parcels of real property if:

1 (i) a substantial number of the parcels are dis-
2 persed geographically;
3 (ii) each parcel of real estate and the improve-
4 ments thereon are suitable (or adaptable without
5 excessive cost) for more than one use;
6 (iii) even if all of such real property is leased
7 to one lessee (which may be a party in interest);
8 and
9 (iv) such acquisition and retention otherwise
10 complies with the provisions of this part; or
11 (B) Securities issued by an employer or a corpora-
12 tion controlling, controlled by, or under common control
13 with the employer.
14 The preceding sentence shall only apply if such plan ex-
15 plicitly provides for acquisition or retention of such real prop-
16 erty or securities, except that it shall apply until the expira-
17 tion of one year from the effective date of this part to such
18 plans which are in existence on the date of enactment and
19 which acquire or retain such real property or securities
20 without explicit provision in the plan.
21 (c) Nothing in this section shall be construed to pro-
22 hibit any fiduciary from—
23 (1) receiving any benefit to which he may be
24 entitled as a participant or beneficiary in the plan under
25 which the fund was established, so long as the benefit is

1 computed and paid on a basis which is consistent with
2 the terms of the plan as applied to all other participants
3 and beneficiaries;
4 (2) receiving any reasonable compensation for
5 services rendered, or for the reimbursement of expenses
6 properly and actually incurred, in the performance of
7 his duties with the fund; except that no person so serv-
8 ing who already receives full-time pay from an employer
9 or an association of employers, whose employees are
10 participants in the plan under which the fund was
11 established, or from an employee organization whose
12 members are participants in such plan shall receive com-
13 pensation from such fund, except for reimbursement of
14 expenses properly and actually incurred and not other-
15 wise reimbursed; or
16 (3) serving as a fiduciary in addition to being an
17 officer, employee, agent, or other representative of a
18 party in interest.
19 (d) Any person who is a fiduciary with respect to a
20 plan who breaches any of the responsibilities, obligations,
21 or duties imposed upon fiduciaries by this title shall be per-
22 sonally liable to make good to such plan any losses to the
23 fund resulting from each breach, and to restore to such plan
24 any profits of such fiduciary which have been made through
25 use of assets of the fund by the fiduciary and shall be subject

1 to such other equitable or remedial relief as the court may
2 deem appropriate, including removal of such fiduciary. A
3 fiduciary may also be removed for a violation of section 113
4 of this Act.

5 (e) All assets of any employee benefit plan (other
6 than any contract for the payment of annuities which is guar-
7 anteed by an insurance company and not issued to a trustee
8 of the plan) shall be held in trust by one or more trustees.
9 Such trustee or trustees shall either be named in the trust
10 instrument or appointed by the administrator or adminis-
11 trators and, upon acceptance of their appointment, shall have
12 exclusive authority and discretion to manage, and exclusive
13 control of, the assets of the plan (subject to proper directions
14 of the administrator which are made under the terms of
15 the plan and which are not contrary to this title and except
16 to the extent that authority to manage, acquire, or dispose
17 of assets of the plan is delegated to one or more investment
18 managers). If the assets of a plan are held by two or
19 more trustees—

20 (1) each shall use reasonable care to prevent a co-
21 trustee from committing a breach, notwithstanding lan-
22 guage to the contrary in the trust agreement; and

23 (2) they shall jointly manage and control the assets
24 of the trust, except that nothing in this paragraph (2)
25 shall preclude any agreement authorized by the trust

1 instrument allocating specific responsibilities, obliga-
2 tions, or duties among trustees, in which event a trustee
3 to whom certain responsibilities, obligations, or duties
4 have not been allocated shall not be liable by reason of
5 this paragraph (2) either individually or as a trustee
6 for any loss resulting to the fund arising from the acts or
7 omissions to act on the part of another trustee to whom
8 such responsibilities, obligations, or duties have been
9 allocated, unless the trustee to whom the responsibilities,
10 obligations, or duties were not allocated participated
11 knowingly in the activities constituting a breach of the
12 specific responsibilities, obligations, or duties allocated
13 to any other trustee.
14 (f) No fiduciary shall be liable with respect to a breach
15 of fiduciary duty under this title if such breach was com-
16 mitted before he became a fiduciary or after he ceased to be a
17 fiduciary.
18 (g) Except as provided in subsections (a) (1) (B)
19 and (e) (2) of this section, any provision in an agreement
20 or instrument which purports to relieve a fiduciary from
21 responsibility or liability for any responsibility, obligation,
22 or duty under this part shall be void as against public policy.
23 (h) No action may be commenced under subsection (d)
24 of this section with respect to a fiduciary's breach of any

1 responsibility, duty, or obligation, or with respect to a viola-
2 tion of section 113, after the earlier of—
3 (1) six years after (A) the date of the last action
4 which constituted a part of the breach or violation, or
5 (B) in the case of an omission, the latest date on
6 which the fiduciary could have cured the breach or vio-
7 lation, or
8 (2) three years after the earliest date (A) on
9 which the plaintiff had actual knowledge of the breach
10 or violation, or (B) on which a report from which he
11 could reasonably be expected to have obtained knowl-
12 edge of such breach or violation was filed with the
13 Secretary under this part.
14 (i) Each pension plan to which this part of this sub-
15 title applies shall provide that benefits provided under the
16 plan may not be assigned or alienated. For purposes of
17 the preceding sentence, there shall not be taken into account
18 any voluntary and revocable assignment of not to exceed
19 10 percent of any benefit payment, or any irrevocable assign-
20 ment or alienation of benefits executed before June 1, 1974.
21 PLAN TERMINATION
22 SEC. 112. (a) Subject to the authority of the Secretary
23 under section 501 of this Act to prescribe an alternative
24 method for satisfying this section (which method shall take
25 into account the requirements of section 401 (a) (4) of the
26 Internal Revenue Code of 1954)—

1 (1) upon the complete termination of a pension
2 plan (except to the extent that such plan is an individ-
3 ual account plan), the net assets of the plan shall be
4 distributed as provided in subsection (b) through (h)
5 of this section; and
6 (2) upon a partial termination of a pension plan
7 (except to the extent that such plan is an individual
8 account plan), a portion of the net assets shall be dis-
9 tributed as provided in subsection (i).
10 (b) Subject to subsections (c) and (e), the net assets
11 of the plan shall be applied in accordance with the follow-
12 ing priorities:
13 (1) First, to refund to each participant in the plan
14 the amount of contributions (less withdrawals) made
15 by him, less the amount of any benefits received by
16 him under the plan prior to termination,
17 (2) Second, to pay to each participant (or his
18 beneficiaries) in the plan who (A) has been receiving
19 benefits under the plan or (B) on the date of such
20 termination, has reached the earliest age on which he
21 could, under the terms of the plan, elect to receive re-
22 tirement benefits (other than on account of disability)
23 under the plan, the present value of his nonforfeitable
24 benefits, reduced (but not below zero) by the amount
25 of contributions distributed under paragraph (1),

1 (3) Third, to pay to each participant in the plan,
2 other than a participant described in paragraph (2)
3 who had acquired nonforfeitable benefits under the plan
4 prior to termination of the plan, the present value of
5 such nonforfeitable benefits reduced (but not below zero)
6 by the amount of contributions distributed under para-
7 graph (1),
8 (4) Fourth, to pay to any participant in the plan,
9 to the extent his accrued benefit is not payable under
10 paragraphs (2) and (3), the present value of such
11 benefit reduced (but not below zero) by the amount of
12 contributions distributed under paragraph (1).
13 (c) (1) If the net assets of a plan are insufficient to
14 meet all the liabilities for the participants described in sub-
15 section (b) and the level of benefits under the plan has been
16 increased within the five-year period preceding termination
17 by reason of a plan amendment affecting the benefit sched-
18 ule, then the net assets shall be distributed as follows (except
19 as otherwise provided in regulations of the Secretary in cases
20 (i) where a change in the benefit schedule during such
21 period resulted in a decrease in benefits for any class of
22 participant, (ii) where the amount of the present value
23 of the benefits of any class of participant cannot be deter-
24 mined under this subsection, or (iii) where the distribution
25 of assets to participants described in subsection (b) (4) of

1 this section would result in the payment of deferred pension
2 benefits of less than $10 per month to such participants):
3 (A) After satisfying the first priority class in sub-
4 section (b), any remaining assets shall be distributed
5 to the participants from the second through the fourth
6 priority classes using the earliest benefit formula in
7 effect during the past five years (but using vesting and
8 eligibility provisions in effect on date of plan termina-
9 tion).
10 (B) Any remaining net assets shall be distributed
11 to each participant in the second through the fourth
12 priority classes using the increment (over such earliest
13 benefit formula) of the second earliest benefit formula in
14 effect during the past five years (but using vesting and
15 eligibility provisions in effect on date of plan termina-
16 tion).
17 (C) Any remaining net assets shall be distributed
18 as above using each successive increment of each suc-
19 cessive benefit formula in effect in such period (but
20 using vesting and eligibility provisions in effect on date
21 of plan termination) until all net assets have been
22 distributed.
23 (2) If after the application of paragraph (1) of this
24 subsection, the aggregate amount of distribution of assets
25 of the plan available for distribution to any class of partic-

1 ipants specified under subsection (b) does not satisfy the
2 aggregate liabilities to such participants (determined after
3 the application of paragraph (1)), then an amount shall
4 be distributed to each such participant which bears the same
5 ratio to the liability to him under this section (after the
6 application of paragraph (1)) as the aggregate of such ag-
7 gregate amount of assets bears to the aggregate liability to all
8 participants in such class; except that the plan may pro-
9 vide that the claims of a part of any such class (established
10 on the basis of age or length of service or both) will receive
11 priority over the remainder of such class.

12 (d) (1) Any assets remaining after the satisfaction of
13 the liabilities described in subsection (b) which are attrib-
14 utable (under regulations of the Secretary) to accumulated
15 investment earnings on employee contributions shall be
16 ratably distributed to the employee contributors according
17 to their rate of contribution.

18 (2) Any assets remaining after satisfaction of liabilities
19 described in subsection (b) and paragraph (1) of this sub-
20 section shall be used to satisfy any such liabilities (other
21 than those described in subsection (b) and paragraph (1))
22 as the plan may set forth as being payable only if the plan
23 terminates.

24 (3) Any assets remaining after the satisfaction of all
25 the liabilities described in subsection (b) and paragraphs

1 (1) and (2) of this subsection may, upon application to the
2 Secretary and after notice, hearing, and a finding that the
3 purposes of this subsection has been complied with, be dis-
4 tributed as provided in the plan. If the plan has no provision
5 for such distribution, such assets shall be distributed pro
6 rata to each person otherwise receiving a distribution under
7 this section.

8 (e) (1) The aggregate reductions which are made in
9 amounts distributed to a participant under subsections
10 (b) (2), (3), and (4) or under subsection (c) and which
11 are attributable to contributions returned under subsection
12 (b) (1) may not exceed the aggregate contributions re-
13 turned to such participant under subsection (b) (1).

14 (2) In the case of a plan to which only participants con-
15 tribute, subsection (b) shall be applied by reversing the pri-
16 orities set forth in paragraphs (1) and (2) of such subsec-
17 tion and by deducting amounts received under paragraph
18 (2) from amounts otherwise due under paragraph (1).

19 (f) For purposes of this section, the term "net assets"
20 means the assets of a plan less (1) reasonable administrative
21 expenses of termination, and (2) assets of the plan which
22 are irrevocably allocated to accounts of individual partici-
23 pants in accordance with a plan provision which has been in
24 effect for at least two years prior to plan termination.

1 (g) The Secretary shall issue regulations to define ac-
2 ceptable methods for paying to each participant the value of
3 his account, as determined under the priority distribution of
4 assets in this section. Such methods shall provide (to the ex-
5 tent feasible) for the payment of the value of the participant's
6 account as a monthly pension.

7 (h) Any plan which provides that participants may elect
8 to have retirement benefits paid in the form of one of several
9 types of annuities and which terminates under this section
10 shall permit all participants who have terminated service
11 under the plan to make such an election.

12 (i) (1) In the event of a complete or partial termina-
13 tion of a plan, the plan shall file a special report on such
14 forms and in such manner as the Secretary may prescribe
15 to carry out the purposes of this section.

16 (2) (A) A plan shall file a report (as required in para-
17 graph (1)), and the Secretary shall make a determination
18 as to whether or not a partial termination has occurred, if
19 the present value of the accrued benefits (whether for-
20 feitable or nonforfeitable, but excluding the present value
21 of any benefit to the extent that the employee had an im-
22 mediate right to receive such benefit upon exclusion from
23 coverage) for all employees excluded from coverage (for
24 any reason) in any period of five consecutive plan years
25 equals or exceeds 25 per centum of the present value of

1 the accrued benefits for all plan participants determined as
2 of the close of any plan year in such five-year period.
3 (B) In the event the Secretary determines a partial
4 termination has occurred, the net assets shall be distributed
5 to the participants and beneficiaries giving rise to the partial
6 termination in accordance with subsections (b) through (h)
7 of this section as if a complete termination had occurred.
8 (3) The term "partial plan termination" for purposes
9 of this section shall be defined by the Secretary by regula-
10 tion. Such regulations shall provide that whether or not a
11 partial termination of a pension plan occurs when a group
12 of participants who have been covered by the plan is sub-
13 sequently excluded from such coverage either by reason of
14 an amendment to the plan, or because of any event or cir-
15 cumstance substantially beyond their control, shall be deter-
16 mined on the basis of all the facts and circumstances; and
17 whether or not a partial termination occurs when benefits
18 or employer contributions are reduced, or the eligibility or
19 vesting requirements under the plan are made more restric-
20 tive shall be determined on the basis of all the facts and cir-
21 cumstances.

22 PROHIBITION AGAINST CERTAIN PERSONS HOLDING
23 OFFICE

24 SEC. 113. (a) No person who has been convicted of,
25 or has been imprisoned as a result of his conviction of, rob-

1 bery, bribery, extortion, embezzlement, fraud, grand larceny,
2 any crime described in section 9(a)(1) of the Investment
3 Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), or a
4 violation of any provision of this title, or a violation of section
5 302 of the Labor Management Relations Act, 1947 (29
6 U.S.C. 186), or a violation of chapter 63 of title 18, United
7 States Code, or a violation of section 874, 1027, 1503, 1505,
8 1506, 1510, 1951, or 1954 of title 18, United States Code,
9 or a violation of the Labor-Management Reporting and Dis-
10 closure Act of 1959 (29 U.S.C. 401), or conspiracy to
11 commit any such crimes or attempt to commit any such
12 crimes, or a crime in which any of the foregoing crimes is
13 an element, shall serve or be permitted to serve—
14 (1) as an administrator, officer, trustee, custodian,
15 counsel, agent, or employee of any employee welfare
16 or pension benefit plan, or
17 (2) as a consultant to any employee welfare or
18 pension benefit plan,
19 during or for five years after such conviction or after the
20 end of such imprisonment, whichever is the later, unless
21 prior to the end of such five-year period, in the case of a
22 person so convicted or imprisoned, (A) his citizenship
23 rights, having been revoked as a result of such conviction,
24 have been fully restored, or (B) the Board of Parole of
25 the United States Department of Justice determines that

1 such person's service in any capacity referred to in para-
2 graph (1) or (2) would not be contrary to the purposes of
3 this title. Prior to making any such determination the Board
4 shall hold an administrative hearing and shall give notice
5 of such proceeding by certified mail to the State, county,
6 and Federal prosecuting officials in the jurisdiction or juris-
7 dictions in which such person was convicted. The Board's
8 determination in any such proceeding shall be final. No
9 person shall knowingly permit any other person to serve
10 in any capacity referred to in paragraph (1) or (2) in vio-
11 lation of this subsection. Notwithstanding the preceding pro-
12 visions of this subsection, no corporation or partnership will
13 be precluded from acting as an administrator, trustee, cus-
14 todian, counsel, agent, or employee of any employee benefit
15 plan or as a consultant to any employee, welfare, or pension
16 benefit plan without a notice, hearing, and determination
17 by the Secretary that such service would be inconsistent with
18 the intention of this section.

19 (b) Any person who intentionally violates this section
20 shall be fined not more than $10,000 or imprisoned for not
21 more than one year, or both.

22 (c) For the purposes of this section:

23 (1) A person shall be deemed to have been "con-
24 victed" and under the disability of "conviction" from
25 the date of the judgment of the trial court or the date of

1 the final sustaining of such judgment on appeal, which-
2 ever is the later event.
3 (2) The term "consultant" means any person who,
4 for compensation, advises or represents an employee
5 benefit plan or who provides other assistance to such
6 plan, concerning the establishment of operation of such
7 plan.
8 (3) A period of parole shall not be considered as
9 part of a period of imprisonment.
10 (d) This section shall not apply to a conviction for a
11 crime committed before the date of enactment of this Act.
12 ADVISORY COUNCIL
13 SEC. 114. (a) There is hereby established an Advisory
14 Council on Employee Welfare and Pension Benefit Plans
15 (hereinafter referred to as the "Council") which shall con-
16 sist of fifteen members to be appointed in the following man-
17 ner: One from the insurance field, one from the corporate
18 trust field, one qualified public accountant (as defined in
19 section 104 (a) (3) (C) of this Act), one enrolled actuary,
20 three from management, three from labor, one from the
21 investment management field, and one from the multi-
22 employer benefit plan field, all appointed by the Secretary
23 from among persons recommended by organizations in the
24 respective groups; and three representatives of the general
25 public appointed by the Secretary.

1 (b) It shall be the duty of the Council to advise the
2 Secretary with respect to the carrying out of his functions
3 under this title, and to submit to the Secretary recommenda-
4 tions with respect thereto. The Council shall meet at least
5 twice each year and at such other times as the Secretary
6 requests. At the beginning of each regular session of the
7 Congress, the Secretary shall transmit to the Senate and
8 House of Representatives each recommendation which he
9 has received from the Council during the preceding calendar
10 year and a report covering his activities under this title for
11 the preceding fiscal year, including full information as to the
12 number of plans and their size, the results of any studies
13 he may have made of such plans and this title's operation and
14 such other information and data as he may deem desirable in
15 connection with employee welfare and pension benefit plans.
16 (c) The Secretary shall furnish to the Council an execu-
17 tive secretary and such secretarial, clerical, and other services
18 as are deemed necessary to the conduct of its business. The
19 Secretary may call upon other agencies of the Government
20 for statistical data, reports, and other information which will
21 assist the Council in the performance of its duties
22 (d) (1) Members of the Council shall each be entitled
23 to receive the daily equivalent of the annual rate of basic pay
24 in effect for grade GS–18 of the General Schedule for each

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1 day (including traveltime) during which they are engaged
2 in the actual performance of duties vested in the Council.
3 (2) While away from their homes or regular places of
4 business in the performance of services for the Council, mem-
5 bers of the Council shall be allowed travel expenses, includ-
6 ing per diem in lieu of subsistence, in the same manner as
7 persons employed intermittently in the Government service
8 are allowed expenses under section 5703 (b) of title 5 of the
9 United States Code.
10 (e) Section 14 (a) of the Federal Advisory Committee
11 Act (relating to termination) shall not apply to the Council.
12 REPEAL AND EFFECTIVE DATE
13 SEC. 115. (a) (1) The Welfare and Pension Plans Dis-
14 closure Act is repealed; except that such Act shall continue to
15 apply to any conduct which occurred before the effective date
16 of this part.
17 (2) (A) Section 664 of title 18, United States Code,
18 is amended by striking out "any such plan subject to the pro-
19 visions of the Welfare and Pension Plans Disclosure Act"
20 and inserting in lieu thereof "any employee benefit plan
21 subject to any provision of title I of the Employee Benefit
22 Security Act of 1974".
23 (B) (i) Section 1027 of such title 18 is amended by
24 striking out "Welfare and Pension Plans Disclosure Act"

1 and inserting in lieu thereof "title I of the Employee Bene-
2 fit Security Act of 1974"; and by striking out "Act" each
3 place it appears and inserting in lieu thereof "title".
4 (ii) The heading for such section is amended by strik-
5 ing out "Welfare and Pension Plans Disclosure Act" and
6 inserting in lieu thereof "Employee Benefit Security Act of
7 1974".
8 (iii) The table of sections of chapter 47 of such title 18
9 is amended by striking out "Welfare and Pension Plans Dis-
10 closure Act" in the item relating to section 1027 and in-
11 serting in lieu thereof "Employee Benefit Security Act of
12 1974."
13 (C) Section 1954 of such title 18 is amended by strik-
14 ing out "any such plan subject to the provisions of the Wel-
15 fare and Pension Plans Disclosure Act, as amended" and
16 inserting in lieu thereof "any employee welfare benefit plan
17 or any employee pension benefit plan, respectively, subject
18 to any provision of title I of the Employee Benefit Security
19 Act of 1974"; and by striking out "sections 3(3) and
20 5(b) (1) and (2) of the Welfare and Pension Plans Dis-
21 closure Act, as amended" and inserting in lieu thereof "sec-
22 tions 3(4) and 3(16) of the Employee Benefit Security
23 Act of 1974".

1 (b) Except as provided in subsection (c), this part
2 (including the amendments and repeal made by subsection
3 (a)) shall take effect six months after the date of enactment
4 of this Act.

5 (c) The provisions of this title authorizing the Secretary
6 to promulgate regulations shall take effect on the date of
7 enactment of this title.

8 (d) In order to provide for an orderly disposition of
9 any investments held on the date of enactment of this Act,
10 the retention of which would be prohibited by section 111 (b)
11 (1) (C), and in order to protect the interest of the fund and
12 its participants and beneficiaries, a fiduciary may in his
13 discretion effect the disposition of such investment within
14 three years after the date of enactment of this Act or within
15 such additional time as the Secretary may by rule or regula-
16 tion allow, and such action shall be deemed to be in com-
17 pliance with section 111 (b) (1) (C).

18 PART 2—VESTING

19 COVERAGE

20 SEC. 201. (a) Except as provided in subsection (b)
21 this part shall apply to any employee pension benefit plan—

22 (1) if it is established or maintained by an em-
23 ployer engaged in commerce or in any industry or
24 activity affecting commerce or by such employer to-
25 gether with any employee organization representing

1 employees engaged in commerce or in any industry or
2 activity affecting commerce; or
3 (2) if such plan is established or maintained by any
4 employer or by any employer together with any em-
5 ployee organization and if, in the course of its activities,
6 such plan, directly or indirectly, uses any means or
7 instruments of transportation or communication in inter-
8 state commerce or the mails.
9 (b) This part shall not apply to any employee pension
10 benefit plan if—
11 (1) such plan is a governmental plan (as defined in
12 section 3 (33)) ;
13 (2) such plan is a church plan (as defined in sec-
14 tion 3 (34)) with respect to which no election has been
15 made under subsection (c) ;
16 (3) such plan is established and maintained outside
17 the United States primarily for the benefit of persons
18 who are not citizens of the United States;
19 (4) such plan is a supplementary plan;
20 (5) such plan is unfunded and is maintained by an
21 employer primarily for the purpose of providing de-
22 ferred compensation for a select group of management
23 or highly compensated employees;
24 (6) such plan is established and maintained by a
25 fraternal society, order, or association described in sec-

1 tion 501 (c) (8) or (9) of the Internal Revenue Code
2 of 1954; or
3 (7) such plan is established and maintained by a
4 labor organization described in section 501 (c) (5) of
5 the Internal Revenue Code and such plan does not at
6 any time after the date of enactment of this Act provide
7 for employer contributions.
8 (c) (1) If the church or convention or association of
9 churches which maintains any church plan makes an election
10 under this subsection (in such form and manner, and with
11 such official, as may be prescribed by regulations), then
12 this part shall apply to such church plan as if this section
13 did not contain an exclusion for church plans.
14 (2) An election under this subsection with respect to
15 any church plan shall be binding with respect to such plan,
16 and, once made, shall be irrevocable.
17 ELIGIBILITY REQUIREMENTS
18 SEC. 202. (a) Except as provided in subsection (b),
19 no pension plan subject to this part shall require as a con-
20 dition of participation in the plan, that an employee complete
21 a period of service with the employer or employers maintain-
22 ing the plan extending beyond any of the following dates:
23 (1) in the case of an employee who begins his
24 period of service on or after the date he attains the
25 age of 24, the date on which he completes 1 year of
26 service; or

1 (2) in the case of an employee who begins his
2 period of service before he attains the age of 24,
3 the date on which he completes 3 years of service or
4 the date on which he attains 25 years of age, which-
5 ever date is earlier.
6 (b) (1) In the case of any plan which provides that
7 after three years of service each participant has a right to 100
8 per centum of his accrued benefit under the plan which is
9 nonforfeitable at the time such benefit accrues, subsection
10 (a) (1) shall be applied by substituting "3 years of service"
11 for "1 year of service".
12 (2) A defined benefit plan may exclude from partici-
13 pation in the plan any person whose employment com-
14 mences at an age which is greater than the regular retire-
15 ment age under the plan reduced by five years.
16 NONFORFEITABLE BENEFITS
17 SEC. 203. (a) Every pension plan subject to this part
18 shall provide rights to participants to receive nonforfeitable
19 pension benefits as follows:
20 (1) A participant's rights in his accrued benefit under
21 the plan derived from his own contributions shall be non-
22 forfeitable.
23 (2) A participant's rights to accrued benefits derived
24 from employer contributions shall be nonforfeitable in ac-
25 cordance with one of the following alternatives:
26 (A) A pension plan may provide that the rights of

1 the employees to receive 100 per centum of the accrued
2 benefit derived from employer contributions shall be non-
3 forfeitable after a specified period of service not to exceed
4 ten years.

5 (B) A pension plan may provide that an employee
6 who has at least five years of service has a nonforfeit-
7 able right to a percentage of his accrued benefit derived
8 from employer contributions. The percentage shall not
9 be less than the percentage determined under the fol-
10 lowing table:

Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

11 (C) A pension plan satisfies the requirements of
12 this paragraph if, under the plan—

13 (i) in the case of an active participant, who
14 has at least five years of service, and with respect to
15 whom the sum of his age and years of service equals
16 or exceeds forty-five, the participant has a nonfor-
17 feitable right to at least 50 per centum of his ac-
18 crued benefit derived from employer contributions,
19 and

20 (ii) for each year of service after such par-

1 ticipant first satisfies the requirements of clause
2 (i), the nonforfeitable percentage of his accrued
3 benefit so derived is not less than the percentage
4 determined under the following table:

Additional years of service:	Nonforfeitable percentage
1	60
2	70
3	80
4	90
5	100

5 (D) In the case of a pension plan in existence on
6 January 1, 1974, for the first five plan years of the plan
7 to which this section applies, in lieu of the nonforfeitable
8 percentages set forth in subparagraph (A), (B), or
9 (C), as the case may be, the nonforfeitable percentage
10 shall be the following percentage of the applicable non-
11 forfeitable percentage determined under such sub-
12 paragraph:

Plan year to which this section applies:	Percentage of applicable nonforfeitable percentage determined under subparagraph (A), (B), or (C)
1	50
2	60
3	70
4	80
5	90

13 (3) Notwithstanding the provisions set forth in para-
14 graphs (1) and (2) of this subsection, if the pension plan is a
15 class year plan, then such plan shall provide that the partici-
16 pant shall acquire a nonforfeitable right to 100 per centum of
17 his rights to or derived from the contributions of the employer
18 on his behalf with respect to any plan year, not later than

1 the end of the fifth year following the year for which such
2 contribution was made. For the purposes of this paragraph,
3 the term "class year plan" means a profit-sharing or stock
4 bonus plan which provides for the separate nonforfeitability
5 of employee rights to or derived from the contributions for
6 each plan year.

7 (b) (1) In computing the period of service under the
8 plan for purposes of determining the nonforfeitable percent-
9 age under subsection (a), a participant's entire service with
10 the employer or employers contributing to or maintaining
11 the plan (or the entire period during which contributions
12 were made by or on behalf of such individual in the case of
13 a plan which employers do not maintain or contribute to)
14 shall be taken into account, except that the following may be
15 disregarded:

16 (A) service during a period for which the partici-
17 pant declined to contribute to a plan requiring employee
18 contributions;

19 (B) service with an employer during any period
20 for which the employer did not maintain the plan;

21 (C) seasonal service not taken into account under
22 section 206 (a) (3);

23 (D) service broken by periods of suspension of
24 employment, if the rules governing such breaks in em-
25 ployment are permissible under paragraph (4) of sec-
26 tion 206 (a); and

1 (E) service before January 1, 1969, unless the
2 participant has had at least five years of service after
3 December 31, 1968.
4 (2) Notwithstanding paragraph (1), for purposes of
5 determining the individual's accrued benefit under the plan,
6 the plan may disregard service performed by the employee
7 with respect to which he has received—
8 (A) a distribution of the present value of his entire
9 nonforfeitable benefit if such distribution was less than
10 $1,750, or
11 (B) a distribution of the present value of his non-
12 forfeitable benefit attributable to such service which he
13 elected to receive.
14 Subparagraph (A) of the preceding sentence shall apply
15 only if such distribution was made on termination of the
16 employee's participation in the plan. Subparagraph (B) of
17 such sentence shall apply only if such distribution was made
18 on termination of the employee's participation in the plan or
19 under such other circumstances as may be provided under
20 regulations prescribed by the Secretary.
21 (c) Nothing contained in this part shall be construed to
22 prohibit any plan provision adopted pursuant to regulations
23 of the Secretary of the Treasury or his delegate under section
24 401 (a) (4) of the Internal Revenue Code of 1954 to pre-
25 clude discrimination.
26 (d) No pension plan subject to this part to which em-

1 ployees contribute shall provide for forfeiture of a partici-
2 pant's accrued benefit derived from employer contributions
3 (whether or not otherwise nonforfeitable), solely because of
4 withdrawal by such employee of amounts attributable to his
5 own contributions.

6 (e) Each plan to which this part applies shall specify
7 which of the schedules described in subparagraph (A),
8 (B), or (C) of subsection (a) (2) shall be the applicable
9 minimum schedule for purposes of such plan. A plan amend-
10 ment may not change any vesting schedule under the plan
11 if the nonforfeitable percentage of the accrued benefit derived
12 from employer contributions (determined for any year of
13 service) of any employee who is a participant in the plan
14 on the date such amendment is adopted or on the date such
15 amendment becomes effective is less than such nonforfeitable
16 percentage computed under the plan without regard to such
17 amendment.

18 (f) (1) Except as provided in paragraph (2) or pur-
19 suant to section 501, a plan may not be amended in a
20 manner which reduces benefits which accrued before the
21 plan year preceding the plan year in which the amendment
22 is adopted. For the purposes of this subsection, any amend-
23 ment applying to a plan year which—

24 (A) is adopted after the close of such plan year
25 but no later than the time prescribed by law (in-
26 cluding extensions) for filing the tax returns of the

1 employer sponsoring the plan for the taxable year with
2 which or within which the plan year ends (or in the
3 case of a multiemployer plan, no later than 2 years after
4 the close of such plan year), and
5 (B) does not reduce the accrued benefit of any
6 participant determined (without regard to such amend-
7 ment) as of the beginning of the first plan year to which
8 the amendment applies,
9 shall, at the election of the plan administrator, be deemed
10 to have been made on the first day of such plan year.
11 (2) Paragraph (1) shall not prohibit a plan amend-
12 ment which, not later than one year after the adoption of an
13 earlier amendment, abrogates such earlier amendment.
14 (g) Notwithstanding any other provision of this part,
15 a pension plan may allow for nonforfeitable benefits after a
16 lesser period and in a greater amount than is required by
17 this section.

18 DISTRIBUTION OF BENEFITS

19 SEC. 204. (a) Nonforfeitable benefits accrued by termi-
20 nated participants may be distributed in the manner set forth
21 in the plan for payment of regular retirement benefits; except
22 that (1) distribution of such benefits shall, at the election of
23 the terminated participant, commence not later than the
24 earlier of the first date that a participant who is not a termi-
25 nated participant, with the same credited service under the

1 plan, could have exercised any unrestricted option under
2 the plan to receive regular retirement benefits, or age sixty-
3 five, and (2) the manner of distribution set forth in the plan
4 shall be the same for the benefits payable to both those
5 who were participants within the twelve months immedi-
6 ately prior to making application to receive regular retirement
7 benefits and those who terminated participation prior to the
8 twelve months preceding application to receive regular
9 retirement benefits. For purposes of this section, the term
10 "terminated participant" means a participant for whom
11 service is no longer being credited under the plan.

12 (b) Nothing in this part shall be construed to prohibit
13 any employee pension plan from providing a reduction to
14 the benefit to be paid any participant on account of such re-
15 cipient's receipt of benefits under the Social Security Act
16 if—

17 (1) in the case of a participant who is receiving
18 benefits under such plan on the effective date of this
19 part, such benefit is not decreased by any subsequent
20 increase in benefits received under the Social Security
21 Act; and

22 (2) in the case of a participant entitled to a non-
23 forfeitable benefit who terminates after the effective
24 date of this part, such benefit is not decreased by
25 any subsequent increases in the benefit levels offered

1 under the Social Security Act after the date of such
2 termination; and
3 (3) in the case of a participant other than one de-
4 scribed in paragraph (1) above entitled to a nonfor-
5 feitable benefit who has terminated prior to the effective
6 date of this part, such benefit is not decreased by any
7 subsequent increases in the benefit levels offered under
8 the Social Security Act following such effective date;
9 and
10 (4) in the case of a participant other than one
11 described in paragraphs (2) and (3) above entitled to
12 an immediate benefit upon termination, such benefit is
13 not decreased by any subsequent increase in benefit
14 levels offered under the Social Security Act following
15 the date of such termination.
16 (c) (1) If a pension plan provides for the payment of
17 benefits in the form of an annuity and if—
18 (A) the participant and his spouse have been mar-
19 ried throughout the five-year period ending on the an-
20 nuity starting date, or
21 (B) the participant dies after his earliest retire-
22 ment age and before the annuity starting date, and the
23 participant and his spouse have been married throughout
24 the five-year period ending on the date of his death,
25 then such plan shall provide for the payment of annuity bene-

1 fits in a form having the effect of a qualified joint and sur-
2 vivor annuity. A qualified joint and survivor annuity re-
3 quired to be paid under this subsection to a participant or
4 his spouse may be in an annual amount which is reduced
5 from the annual amount of a single life annuity to which such
6 participant would be entitled if he made an election under
7 paragraph (2), but such reductions shall not exceed the
8 estimated additional actuarial costs associated with providing
9 qualified joint and survivor annuities under the plan.
10 (2) Nothing in this subsection shall prohibit a plan
11 provision which provides that—
12 (A) each participant has a reasonable period (as
13 prescribed by the Secretary or his delegate by regula-
14 tions) before the annuity starting date during which he
15 may elect in writing (after having received a written
16 explanation of the terms and conditions of the joint and
17 survivor annuity and the effect of an election under this
18 paragraph) not to take the joint and survivor annuity.
19 (B) any election under subparagraph (A), and
20 any revocation of any such election, does not become
21 effective (or ceases to be effective) if the participant
22 dies within a period (not in excess of two years) begin-
23 ning on the date of such election or revocation, as the
24 case may be.
25 (3) For purposes of this subsection—

1 (A) the term "annuity starting date" means the first
2 day of the first period for which an amount is received
3 as an annuity (whether by reason of retirement or by
4 reason of disability),
5 (B) the term "earliest retirement age" means the
6 earliest date on which, under the plan, the participant
7 could elect to receive retirement benefits, and
8 (C) the term "qualified joint and survivor annuity"
9 means an annuity for the life of the participant with a
10 survivor annuity for the life of his spouse which is not
11 contingent upon survivorship of such spouse beyond the
12 earliest age at which the participant could elect to receive
13 retirement benefits under the plan and which is not less
14 than one-half of the amount of the annuity payable
15 during the joint lives of the participant and his spouse.
16 (4) This subsection shall apply only if—
17 (A) the annuity starting date did not occur before
18 the effective date of this part, and
19 (B) the participant was an active participant in
20 the plan on or after such effective date.
21 ACCRUED BENEFIT REQUIREMENTS
22 SEC. 205. (a) Each defined benefit plan to which this

1 part applies shall provide for a method of accruing benefits
2 which meets the requirements of subsection (b).
3 (b) (1) A defined benefit plan satisfies the require-
4 ments of this subsection if the annual rate at which any
5 participant accrues benefits under the plan for any year of
6 service before the end of $33\frac{1}{3}$ years of service is not less than
7 3 per centum of the maximum benefit to which such partici-
8 pant would be entitled if he commenced participation at the
9 earliest possible entry age under the plan and served con-
10 tinuously until the earlier of age sixty-five or the normal
11 retirement age specified under the plan. In the case of a
12 plan providing retirement benefits based on compensation
13 during any period, the maximum benefit to which a partici-
14 pant would be entitled shall be determined as if he continued
15 to earn annually the average rate of compensation which he
16 earned during consecutive years of service, not in excess of
17 ten, for which his compensation was the highest. For pur-
18 poses of this subparagraph, social security benefits and all
19 other relevant factors used to compute benefits shall be
20 treated as remaining constant as of the current year for all
21 years after such current year. If the plan provides that
22 any participant's accrued benefits under the plan will be
23 reduced on account of the participant's social security bene-

1 fits, the amount of social security benefits used for purposes
2 of computing the reduction of the participant's accrued bene-
3 fits under this paragraph may not exceed the participant's
4 social security benefits (computed without regard to this
5 sentence) multiplied by his service ratio. For purposes of
6 this paragraph, the term "service ratio" means the partici-
7 pant's years of service under the plan divided by the aggre-
8 gate years of service he would have if he served until the
9 normal retirement age.

10 (2) A defined benefit plan satisfies the requirements
11 of this subsection unless under the plan the annual rate at
12 which any participant can accrue the retirement benefits
13 payable at normal retirement age under the plan for any plan
14 year is more than 133⅓ per centum of the annual rate at
15 which he can accrue benefits for any other plan year; except
16 that an accrual rate for any year before the eleventh year of
17 service which exceeds by more than 133⅓ per centum of the
18 accrual rate for any year after the tenth year of service may
19 be disregarded. For purposes of this subparagraph—

20 (A) the accrual rate for any plan year after the
21 participant is eligible to retire with benefits which are
22 not actuarially reduced on account of age or service
23 shall not be taken into account;

1 (B) any amendment to the plan which is in effect
2 for the current year shall be treated as in effect for all
3 other plan years;
4 (C) any change in an accrual rate which does not
5 apply to any participant in the current year shall be
6 disregarded;
7 (D) the fact that benefits under the plan may be
8 payable to certain employees before normal retire-
9 ment age shall be disregarded; and
10 (E) social security benefits and all other relevant
11 factors used to compute benefits shall be treated as
12 remaining constant as of the current year for all years
13 after the current year.
14 (3) Notwithstanding paragraphs (1) and (2), a de-
15 fined benefit plan satisfies the requirements of this paragraph
16 if such plan—
17 (A) is funded exclusively by the purchase of
18 individual insurance contracts, and
19 (B) satisfies the requirements of paragraphs (2)
20 and (3) of section 301 (d),
21 but only if an employee's accrued benefit as of any applicable
22 date is not less than the cash surrender value his insurance
23 contracts would have on such applicable date if the require-
24 ments of paragraphs (4), (5), and (6) of section 301 (d)
25 were satisfied.
26 (c) (1) Each defined benefit plan to which this part

1 applies shall provide for separate accounting for the portion
2 of each employee's accrued benefit derived from any volun-
3 tary employee contributions permitted under the plan.
4 (2) Each individual account plan to which this part
5 applies shall provide for separate accounting for each em-
6 ployee's accrued benefit, and shall require that all con-
7 tributions, income expenses, and forfeitures be allocated, no
8 less frequently than annually, to the participants' accounts
9 comprising the plan.
10 (3) For purposes of determining an employee's accrued
11 benefit, the term "year of service" means a period of
12 service (beginning not later than the date on which the
13 employee first becomes a participant in the plan) deter-
14 mined under provisions of the plan which provide for the
15 calculation of such period on a reasonable and consistent
16 basis. The Secretary shall prescribe regulations defining
17 reasonable and consistent basis for purposes of the preceding
18 sentence. In prescribing such regulations, the Secretary shall
19 take into account the rules relating to the measurement of
20 time and to breaks in service contained in the regulations
21 under section 206(b); but plan provisions shall not be
22 deemed to provide for calculation of a period of service on a
23 basis which is not reasonable and consistent merely because
24 they make adjustments in determining year of service (for

1 purposes of accrual of benefits) in order to reflect less than
2 full-time service by a participant.
3 (d) (1) For purposes of this part, an employee's ac-
4 crued benefit derived from employer contributions of any
5 applicable date is the excess of the accrued benefit for such
6 employee as of such applicable date over the accrued benefit
7 derived from contributions made by such employee as of
8 such date.
9 (2) (A) In the case of a plan other than a defined
10 benefit plan, the accrued benefit derived from contributions
11 made by an employee as of any applicable date is—
12 (i) except as provided in clause (ii), the balance
13 of the employee's separate account consisting only of
14 his contributions and the income, expenses, gains, and
15 losses attributable thereto, or
16 (ii) if a separate account is not maintained with
17 respect to an employee's contributions under such a plan,
18 the amount which bears the same ratio to his total
19 accrued benefit as the total amount of the employee's
20 contributions (less withdrawals) bears to the sum of
21 such contributions and the contributions made on his
22 behalf by the employer (less withdrawals).
23 (B) (i) In the case of a defined benefit plan providing
24 an annual benefit in the form of a single life annuity (with-

1 out ancillary benefits) commencing at normal retirement
2 age, the accrued benefit derived from contributions made by
3 an employee as of any applicable date is the annual benefit
4 equal to the employee's accumulated contributions multiplied
5 by the appropriate conversion factor.

6 (ii) For purposes of clause (i) the term "appropriate
7 conversion factor" means the factor necessary to convert an
8 amount equal to the accumulated contributions to a single life
9 annuity (without ancillary benefits) commencing at normal
10 retirement age and shall be 10 percent for a normal retire-
11 ment age of 65 years. For other normal retirement ages the
12 conversion factor shall be determined in accordance with
13 regulations prescribed by the Secretary.

14 (C) For purposes of this subsection, the term "ac-
15 cumulated contributions" means the total of—

16 (i) all mandatory contributions made by the em-
17 ployee,

18 (ii) interest (if any) under the plan to the end of
19 the last plan year to which this part does not apply (by
20 reason of the applicable effective date), and

21 (iii) interest on the sum of the amounts determined
22 under clauses (i) and (ii) compounded annually at
23 the rate of 5 percent per annum from the beginning of
24 the first plan year to which this part applies (by reason

1 of the applicable effective date) to the date upon which
2 the employee would attain normal retirement age.
3 For purposes of this subparagraph, the term "mandatory
4 contributions" means amounts contributed to the plan by
5 the employee which are required as a condition of employ-
6 ment, as a condition of participation in such plan, or as a
7 condition of obtaining benefits under the plan attributable
8 to employer contributions.
9 (D) The Secretary is authorized to adjust by regulation
10 the conversion factor described in subparagraph (B), the
11 rate of interest described in clause (iii) of subparagraph
12 (C), or both, from time to time as he may deem necessary.
13 The rate of interest shall bear the relationship to 5 percent
14 which the Secretary determines to be comparable to the
15 relationship which the long-term money rates and invest-
16 ment yields for the last period of 10 calendar years ending
17 at least 12 months before the beginning of the plan year
18 bear to the long-term money rates and investment yields
19 for the 10-calendar-year period 1964 through 1973. No such
20 adjustment shall be effective for a plan year beginning before
21 the expiration of 1 year after such adjustment is determined
22 and published.
23 (E) The accrued benefit derived from employee con-

1 tributions shall not exceed the employee's accrued benefit
2 under the plan.
3 (3) For purposes of this part, in the case of any defined
4 benefit plan, if an employee's accrued benefit is to be deter-
5 mined as an amount other than an annual benefit commenc-
6 ing at normal retirement age, or if the accrued benefit
7 derived from contributions made by an employee is to be
8 determined with respect to a benefit other than an annual
9 benefit in the form of a single life annuity (without ancillary
10 benefits) commencing at normal retirement age, the em-
11 ployee's accrued benefit, or the accrued benefits derived from
12 contributions made by an employee, as the case may be, shall
13 be the actuarial equivalent of such benefit or amount deter-
14 mined under paragraph (1) or (2) of this subsection.
15 (e) In the case of a defined benefit plan which permits
16 voluntary employee contributions, the portion of an em-
17 ployee's accrued benefit derived from such contributions shall
18 be treated as an accrued benefit derived from employee con-
19 tributions under a plan other than a defined benefit plan.
20 DEFINITION OF YEAR OF SERVICE
21 SEC. 206. (a) (1) For purposes of section 202, the
22 term "year of service" means a period of service determined
23 under regulations prescribed by the Secretary which pro-
24 vide for the calculation of such period on any reasonable and
25 consistent basis.

1 (2) For purposes of this section, the calculation of any
2 period of service shall not be treated as made on a reason-
3 able basis—
4 (A) if the average period of service required for
5 participation in the plan (determined as if one em-
6 ployee commenced his service on each day) is more
7 than 12 months, or
8 (B) if any employee who has completed more
9 than 17 months of continuous service is excluded from
10 participation in the plan by such calculation.
11 (3) For purposes of this section, the calculation of any
12 period of service shall not be treated as made on a reasonable
13 basis in the case of a seasonal employee whose customary
14 employment is for at least 5 months in a 12-month period, if
15 his period of service is treated as less than the period of serv-
16 ice he would have had if his customary employment had
17 been nonseasonal.
18 (4) (A) For purposes of this section, in the case of any
19 employee who has a break in his service with the employer
20 for a continuous period of not less than 1 year, the calcula-
21 tion of his period of service shall not be treated as not made
22 on a reasonable basis merely because, under the plan, service
23 performed by such employee is not taken into account until
24 he has completed a continuous period of service (not in
25 excess of 1 year) after his return.

1 (B) For purposes of this section, in the case of any
2 employee who has a break in his service with the employer
3 and, who before such break, had a nonforfeitable right to 50
4 percent or more of his accrued benefit derived from employer
5 contributions, the calculation of his period of service shall not
6 be treated as made on a reasonable basis if service performed
7 by such employee before the end of such break in service is
8 not taken into account in calculating his period of service.
9 (C) For purposes of this section, except as otherwise
10 provided in subparagraphs (A) and (D), in the case of
11 any employee who has a break in his service with the em-
12 ployer for a continuous period of not less than 12 months,
13 the calculation of his period of service shall not be treated
14 as made on a reasonable basis if such employee completed
15 four consecutive years of service prior to such break and all
16 service prior to such break is not taken into account.
17 (D) Except as provided in subparagraph (B), for pur-
18 poses of this section, in the case of any employee who
19 has a break in his service with the employer for a continu-
20 ous period of not less than 6 years, the calculation of his
21 period of service shall not be treated as not made on a rea-
22 sonable basis merely because under the plan, service per-
23 formed by such employee before the end of such break in
24 service is not taken into account.
25 (5) The regulations prescribed under this subsection

1 and subsection (b) shall take into account the customary
2 working period (as expressed in hours, days, weeks, months,
3 or years) in any industry where, by the nature of the em-
4 ployment, such period differs substantially from the compar-
5 able work period in industry generally.

6 (b) For purposes of section 203, the term "year of
7 service" means a period of service determined under regula-
8 tions prescribed by the Secretary which provide for the
9 calculation of such period on any reasonable and consistent
10 basis. The regulations prescribed under this subsection shall
11 be consistent with the regulations prescribed under subsec-
12 tion (a) for purposes of section 202.

13 EFFECTIVE DATE

14 SEC. 207. (a) Except as otherwise provided in this sec-
15 tion, this part shall apply in the case of plan years beginning
16 after the date of the enactment of this Act.

17 (b) (1) In the case of a plan in existence on January
18 1, 1974, this part shall apply in the case of plan years begin-
19 ning after December 31, 1975. In any case described in
20 paragraph (2) of this subsection, such paragraphs shall
21 apply if (and only if) their application results in a later
22 effective date of this part.

23 (2) In the case of a plan maintained pursuant to one
24 or more agreements which the Secretary finds to be collec-

1 tive-bargaining agreements between employee representa-
2 tives and one or more employers, and which he finds (in
3 the aggregate) cover more than 25 percent of the partici-
4 pants in such plan, paragraph (1) shall be applied by sub-
5 stituting for December 31, 1975, the earlier of—
6 (A) the date on which the last of such agree-
7 ments relating to the plan terminates (determined with-
8 out regard to any extension thereof agreed to after the
9 date of the enactment of this Act), or
10 (B) December 31, 1980,
11 but in no event shall a date earlier than December 31,
12 1976, be substituted.

13 PART 3—FUNDING

14 COVERAGE

15 SEC. 301. (a) Except as provided in subsections (b),
16 (c), and (d), this part shall apply to any employee benefit
17 pension plan—
18 (1) if it is established or maintained by any em-
19 ployer engaged in commerce or in any industry or
20 activity affecting commerce or by such employer to-
21 gether with any employee organization representing
22 employees engaged in commerce or in any industry or
23 activity affecting commerce; or
24 (2) if such plan is established or maintained by any
25 employer or by any employer together with any em-

1 ployee organization and if, in the course of its activities,
2 such plan, directly or indirectly, uses any means or
3 instruments of transportation or communication in inter-
4 state commerce or the mails.
5 (b) This part shall not apply to any employee pension
6 benefit plan if—
7 (1) such plan is a governmental plan (as defined
8 in section 3 (33)) ;
9 (2) such plan is a church plan (as defined in sec-
10 tion 3 (34)) with respect to which no election has been
11 made under section 201 (c) ;
12 (3) such plan is established and maintained outside
13 the United States primarily for the benefit of persons
14 who are not citizens of the United States; or
15 (4) such plan is a supplementary plan;
16 (5) such plan is unfunded and is maintained by
17 an employer primarily for the purpose of providing
18 deferred compensation for a select group of manage-
19 ment or highly compensated employees;
20 (6) such plan provides contributions or benefits
21 exclusively for a sole proprietor; or, in the case of a
22 partnership, exclusively for one or more partners each
23 of whom owns more than 10 per centum of either the
24 capital interest or the profits interest in such partnership;
25 (7) such plan has not, at any time after the date

1 of the enactment of this Act, provided for employer
2 contributions; or
3 (8) such plan is established and maintained by a fra-
4 ternal society, order, or association described in section
5 501(c) (8) or (9) of the Internal Revenue Code of
6 1954.
7 (c) This part shall not apply to any employee pension
8 benefit plan if the plan is a profit-sharing, savings, or other
9 plan which is an individual account plan.
10 (d) This part shall not apply to a plan if—
11 (1) the plan is funded exclusively by the pur-
12 chase of individual insurance contracts,
13 (2) such contracts provide for level annual pre-
14 mium payments to be paid extending not later than the
15 retirement age for each individual participating in the
16 plan, and commencing with the date the individual be-
17 came a participant in the plan (or, in the case of an
18 increase in benefits, commencing at the time such in-
19 crease becomes effective),
20 (3) benefits provided by the plan are equal to
21 the benefits provided under each contract at normal
22 retirement age under the plan and are guaranteed by
23 an insurance carrier (licensed under the laws of a State
24 to do business with the plan) to the extent premiums
25 have been paid,

1 (4) premiums payable for the plan year, and all
2 prior plan years under such contracts have been paid
3 before lapse or there is reinstatement of the policy,
4 (5) no rights under such contracts have been
5 subject to a security interest at any time during the plan
6 year, and
7 (6) no policy loans are outstanding at any time
8 during the plan year.

9 FUNDING ACCOUNT

10 SEC. 302. (a) Every employee pension benefit plan
11 subject to this part shall provide for a minimum annual level
12 of contributions which meets the minimum funding stand-
13 ard for any plan year to which this part applies. A plan to
14 which this section applies meets the minimum funding stand-
15 ard for such plan for a plan year if at the end of which the
16 plan does not have an accumulated funding deficiency. For
17 purposes of this part, the term "accumulated funding defi-
18 ciency" means for any plan the excess of the total charges to
19 the funding standard account for all plan years (beginning
20 with the first plan year to which this part applies) over the
21 total credits to such account for such years.
22 (b) (1) Each plan to which this part applies shall estab-
23 lish and maintain a funding standard account. Such account
24 shall be credited and charged solely as provided in this
25 section.

1 (2) For a plan year, the funding standard account shall
2 be charged with the sum of—
3 (A) the normal cost of the plan for the plan year,
4 (B) the amounts necessary to amortize in equal
5 annual installments (until fully amortized)—
6 (i) in the case of a plan in existence on Jan-
7 uary 1, 1974, the unfunded past service liability
8 under the plan on the first day of the first plan year
9 to which this section applies, over a period of forty
10 plan years,
11 (ii) in the case of a plan which comes into
12 existence after January 1, 1974, the unfunded past
13 service liability under the plan on the first day of
14 the first plan year to which this section applies, over
15 a period of thirty plan years (forty plan years in
16 the case of a multiemployer plan),
17 (iii) separately, with respect to each plan
18 year, the net increase (if any) in unfunded past
19 service liability under the plan arising from plan
20 amendments adopted in such year, over a period
21 of thirty plan years (forty plan years in the case
22 of a multiemployer plan), and
23 (iv) separately, with respect to each plan
24 year, the net experience loss (if any) under the
25 plan, over a period of fifteen plan years (twenty

1 plan years in the case of a multiemployer plan),
2 and
3 (C) the excess, if any, for such plan year of
4 (i) the annual amount which would be neces-
5 sary to amortize in equal annual installments from
6 such year over a period of twenty years the excess,
7 if any, of the present value of all nonforfeitable
8 benefits (computed using appropriate mortality and
9 interest assumptions) over the value of the plan's
10 assets, over
11 (ii) the excess, if any, of the sum of the
12 amounts computed under subparagraphs (A) and
13 (B) of paragraph (2) over the amount computed
14 under paragraph (3) (B).
15 (3) For a plan year, the funding standard account
16 shall be credited with the sum of—
17 (A) the amount considered contributed to the plan
18 for the plan year, and
19 (B) the amount necessary to amortize in equal
20 annual installments (until fully amortized)—
21 (i) separately, with respect to each plan year,
22 the net decrease (if any) in unfunded past service
23 liability under the plan arising from plan amend-
24 ments adopted in such year, over a period of thirty

1 plan years (forty plan years in the case of a multi-
2 employer plan), and
3 (ii) separately, with respect to each plan year,
4 the net experience gain (if any) under the plan,
5 over a period of fifteen plan years (twenty plan
6 years in the case of a multiemployer plan).
7 (4) Under regulations prescribed by the Secretary,
8 amounts required to be amortized under paragraph (2) or
9 paragraph (3), as the case may be—
10 (A) may be combined into one amount under such
11 paragraph to be amortized over a period determined on
12 the basis of the remaining amortization period for all
13 items entering into such combined amount, and
14 (B) may be offset against amounts required to be
15 amortized under the other such paragraph, with the
16 resulting amount to be amortized over a period deter-
17 mined on the basis of the remaining amortization peri-
18 ods for all items entering into whichever of the two
19 amounts being offset is the greater.
20 (5) The funding standard account (and items therein)
21 shall be charged or credited with interest at the appropriate
22 rate consistent with the rate or rates of interest used under
23 the plan to determine costs. The Secretary shall prescribe
24 regulations to carry out this paragraph.
25 (c) (1) For purposes of this section, normal costs,

1 accrued liability, past service liabilities, and experience gains
2 and losses shall be determined under the funding method
3 used to determine costs under the plan.

4 (2) (A) For purposes of this section, the value of the
5 plan's assets shall be determined on the basis of any reason-
6 able actuarial method of valuation which takes into account
7 fair market value and which is permitted under regulations
8 prescribed by the Secretary.

9 (B) The value of a bond or other evidence of indebted-
10 ness which is not in default as to principal or interest may,
11 at the election of the plan administrator, be determined on an
12 amortized basis running from initial cost at purchase to par
13 value at maturity or earliest call date. Any election under
14 this subparagraph shall be made at such time and in such
15 manner as the Secretary shall by regulations provide, shall
16 apply to all such evidences of indebtedness, and may be re-
17 voked only with the consent of the Secretary.

18 (3) For purposes of this section, all costs, liabilities,
19 rates of interest, and other factors under the plan shall be
20 determined on the basis of actuarial assumptions which meet
21 the requirements of section 104(a) (4) (B) (i) and (ii).

22 (d) If the funding method for a plan is changed, the
23 new funding method shall become the funding method used
24 to determine costs and liabilities under the plan only if the
25 change is approved by the Secretary. If the plan year for

1 a plan is changed, the new plan year shall become the plan
2 year for the plan only if the change is approved by the
3 Secretary.

4 (e) (1) (A) For the purpose of this section, an experi-
5 ence gain or loss occurs wherever the experience of the plan
6 deviates from the projected assumptions sufficiently to require
7 a change in such assumptions. The amount of such gain or
8 loss shall be calculated as the increase (in the case of an
9 experience loss) or the decrease (in the case of an experience
10 gain) in the accrued portion of the unfunded liabilities of
11 the plan attributable to such change in the assumptions.
12 The Secretary shall promulgate regulations to carry out
13 this subsection.

14 (B) For purposes of this subparagraph (A), if—

15 (i) a change in benefits under the Social Security
16 Act or in other retirement benefits created under Fed-
17 eral or State law, or

18 (ii) a change in the definition of the term "wages"
19 under section 3121 of the Internal Revenue Code of
20 1954, or a change in the amount of such wages taken
21 into account under regulations prescribed for purposes
22 of section 401 (a) (5) of such Code,

23 results in an increase or decrease in accrued liability under
24 a plan, such increase or decrease shall be treated as an
25 experience loss or gain.

1 (2) For purposes of this section, a determination of
2 experience gains and losses and a valuation of the plan's
3 liability shall be made not less frequently than once every
4 three years, except that such determination shall be made
5 more frequently to the extent required in particular cases
6 under regulations prescribed by the Secretary.
7 (f) (1) If, as of the close of a plan year, a plan would
8 (but for the application of this paragraph) have an accumu-
9 lated funding deficiency in excess of the full funding limita-
10 tion—
11 (A) the funding standard account shall be credited
12 with the amount of such excess, and
13 (B) all amounts described in paragraphs (2) (B)
14 and (3) (B) of subsection (b) which are required to be
15 amortized shall be considered fully amortized for pur-
16 poses of such paragraphs.
17 (2) For purposes of paragraph (1), the term "full
18 funding limitation" means the excess (if any) of—
19 (A) the accrued liability (including normal cost)
20 under the plan (determined under the entry age normal
21 funding method if such accrued liability cannot be direct-
22 ly calculated under the funding method used for the
23 plan), over
24 (B) the lesser of the fair market value of the

1 plan's assets or the value of such assets determined under
2 subsection (c) (2).

3 ENFORCEMENT OF FUNDING STANDARDS

4 SEC. 303. (a) When the pension plan's level of fund-
5 ing fails to meet the requirements of section 302, the ad-
6 ministrator shall take such steps as are necessary to bring the
7 level of funding into conformity with the benefits offered by
8 the plan and are consistent with this title. He shall take
9 whatever actions are necessary to protect the benefit rights
10 of all plan participants but shall first make secure the interests
11 of those participants whose benefit rights have become non-
12 forfeitable. The administrator shall require payment of any
13 contribution required under the plan; and in addition he is
14 specifically authorized, where necessary (1) to undertake to
15 secure additional levels of funding from the sponsoring em-
16 ployer or employers to the full extent possible, and (2)
17 where he cannot secure adequate additional levels of fund-
18 ing (A) subject to section 203(f), to amend the plan's
19 benefit schedule so as to reduce the value of the accrued
20 regular retirement benefits (whether or not forfeitable),
21 (B) to suspend the further accumulation of regular retire-
22 ment benefits under the plan, (C) to suspend or terminate
23 the operation of the plan, and (D) to take any other action
24 in conformity with this title which is necessary to secure the
25 rights of the participants to regular retirement benefits.

1 (b) When a plan fails to meet the funding requirements
2 of section 302 for five consecutive plan years, the adminis-
3 trator shall (subject to section 203 (f)) amend the benefit
4 schedule for such plan to reduce the value of the accrued
5 liabilities to such an extent as is necessary to bring the plan's
6 funding schedule into conformity with the requirements of
7 section 302 (a).

8 (c) Whenever the administrator determines that the
9 funding requirements under section 302 (a) have not been
10 met, he shall so notify the Secretary and each participant
11 within sixty days, and not earlier than sixty days or later
12 than ninety days after such notification he shall take action
13 pursuant to subsection (a) or (b) of this section (unless
14 the Secretary stays his proposed action under subsection
15 (d) (2)). He shall inform the Secretary and each partici-
16 pant of whatever action he proposes to take under subsec-
17 tion (a) or (b), and the reason for such action within sixty
18 days after the notice under the preceding sentence.

19 (d) If the Secretary receives a notification required
20 under subsection (c) of this section, he may—

21 (1) require the administrator to make such addi-
22 tional reports as he determines are necessary to fully
23 disclose the extent of the level of funding of the plan,
24 the adequacy of protection afforded the participants,

1 and the adequacy of the remedy proposed by the ad-
2 ministrator; and
3 (2) stay the action proposed by the administrator,
4 if the Secretary has reason to believe the administrator's
5 action is not fair and equitable to participants and bene-
6 ficiaries, or (after notice and opportunity to present
7 views) order the administrator to take any action de-
8 scribed in subsection (a), (b), or (c) of this section,
9 or both.
10 (e) The provisions of part 2 of this subtitle (other than
11 section 203 (f)) shall not be construed as prohibiting any
12 action authorized or required by this section.
13 SPECIAL DISTRIBUTION AND MERGER REQUIREMENTS
14 SEC. 304. (a) No pension plan to which this part applies
15 may merge or consolidate with, or transfer its assets or li-
16 abilities to, any other pension plan unless each participant
17 in each plan would receive a termination benefit immediately
18 after the merger, consolidation, or transfer which is equal to
19 or greater than the termination benefit he would receive
20 immediately before the merger, consolidation, or transfer.
21 (b) No pension plan to which this part applies may
22 make a lump-sum distribution of the present value of non-
23 forfeitable pension benefits to a participant or beneficiary if
24 such distribution exceeds the termination benefit he would
25 receive if the plan terminated on the date of such distribution.

1 (c) No merger, consolidation, or transfer of assets or
2 liabilities, or distributions of assets to any participant in any
3 plan year in excess of $25,000, may be made by any
4 pension plan subject to this part, unless the administrator has
5 filed an actuarial statement of valuation evidencing com-
6 pliance with the requirements of this section with the Sec-
7 retary no less than thirty days prior to such merger, con-
8 solidation, transfer, or lump-sum distribution.

9 (d) For the purposes of this section, a participant's
10 termination benefit as of a particular time is the amount a
11 participant would receive under section 112 of this Act if the
12 plan were terminated on such date.

13 EFFECTIVE DATE

14 SEC. 305. (a) Except as otherwise provided in this
15 section, this part shall apply in the case of plan years be-
16 ginning after the date of the enactment of this Act.

17 (b) (1) Except as otherwise provided in subsection (c),
18 in the case of a plan in existence on January 1, 1974, this
19 part shall apply in the case of plan years beginning after
20 December 31, 1975. In any case described in paragraph (2)
21 of this subsection, such paragraph shall apply if (and only
22 if) its application results in a later effective date for this part.

23 (2) In the case of a plan maintained pursuant to one or
24 more agreements which the Secretary finds to be collective-
25 bargaining agreements between employee representatives

1 and one or more employers, and which he finds (in the ag-
2 gregate) cover more than 25 per centum of the participants
3 in the plan, paragraph (1) shall be applied by substitut-
4 ing for December 31, 1975, the earlier of—
5 (A) the date on which the last of such agree-
6 ments relating to the plan terminates (determined
7 without regard to any extension thereof agreed to after
8 the date of the enactment of this Act), or
9 (B) December 31, 1980,
10 but in no event shall a date earlier than December 31,
11 1976, be substituted.
12 (c) (1) Notwithstanding subsection (b) of this sub-
13 section, with respect to plan years beginning after the date
14 of enactment of this Act and ending before the first plan year
15 to which (but for this paragraph) part would apply to
16 such plan, any plan in effect on January 1, 1974, shall pro-
17 vide for a minimum level of contributions equal to or greater
18 than the sum of—
19 (A) the normal service costs for such year;
20 (B) the unfunded portion of the accrued liability
21 (if any) times the interest rate used in computing such
22 liability under the actuarial cost method used to deter-
23 mine such liability.
24 (2) In the case of a plan in effect on January 1, 1974,
25 established by an employee organization and financed en-

1 tirely by an allocation of dues, this title shall apply to plan
2 years beginning more than seven years after the date of en-
3 actment of this Act.

4 PART 4—PLAN TERMINATION INSURANCE

5 ESTABLISHMENT OF PENSION INSURANCE CORPORATION

6 SEC. 401. (a) ESTABLISHMENT.—There is established
7 with the Department of Labor a body corporate to be known
8 as the Pension Benefit Guaranty Corporation (hereinafter
9 referred to as the "Corporation"). In carrying out its func-
10 tions under this part the Corporation shall be administered
11 by a Board of Directors (as provided in subsection (c)),
12 under the general supervision and direction of the Secretary
13 of Labor.

14 (b) BOARD OF DIRECTORS.—The Board of Directors
15 of the Corporation shall be composed of the Secretary of
16 Labor and two officers or employees of the Department of
17 Labor, who shall serve as directors at the pleasure of the
18 Secretary. Members of the Board shall serve without com-
19 pensation, but shall be reimbursed for travel, subsistence,
20 and other necessary expenses incurred in the performance of
21 their duties of members of the Board. The Secretary of Labor
22 shall be the Chairman of the Board of Directors.

23 (c) MEETINGS OF BOARD.—The Board of Directors shall
24 meet at the call of its Chairman, or as otherwise provided by
25 the bylaws of the Corporation.

1 PURPOSES AND POWERS OF THE CORPORATION

2 SEC. 402. (a) IN GENERAL.—The purpose of the Cor-
3 poration is—

4 (1) encourage the continuation and maintenance
5 of voluntary private pension plans to the benefit of their
6 participants,

7 (2) provide for the timely and uninterrupted pay-
8 ment of pension benefits to the participants and bene-
9 ficiaries under all insured plans, and

10 (3) minimize over the long run the premiums
11 charged by the Corporation under section 405.

12 In order to carry out these purposes, the Corporation is
13 authorized to provide plan termination insurance as provided
14 in this part.

15 (b) POWERS.—To carry out the foregoing purposes, the
16 Corporation shall have the usual powers conferred on a non-
17 profit corporation by the District of Columbia Nonprofit
18 Corporation Act. In addition to any specific power granted
19 to the Corporation elsewhere in this part, the Corporation
20 shall have the power—

21 (1) to sue and be sued, in its corporate name and
22 through its own counsel, in any court, State or Federal;

23 (2) to adopt, amend, and repeal, by its Board of
24 Directors, bylaws and rules relating to the conduct of its

1 business and the exercise of all other rights and powers
2 granted to it by this part;
3 (3) to conduct its business (including the carrying
4 on of operations and the maintenance of offices) and to
5 exercise all other rights and powers granted to it by this
6 part in any State without regard to qualification, licens-
7 ing, or other statute in such State or political subdivision
8 thereof;
9 (4) to lease, purchase, accept gifts or donations of,
10 or otherwise to acquire, to own, hold, improve, use, or
11 otherwise deal in or with, and to sell, convey, mortgage,
12 pledge, lease, exchange, or otherwise dispose of, any
13 property, real, personal, or mixed, or any interest
14 therein, wherever situated;
15 (5) to elect or appoint such officers, attorneys, em-
16 ployees, and agents as may be required, to determine
17 their qualifications, to define their duties, to fix their
18 salaries, and, to the extent desired, require bonds for
19 them and fix the penalty thereof; and
20 (6) to enter into contracts, to execute instruments,
21 to incur liabilities, and to do any and all other acts and
22 things as may be necessary or incidental to the conduct
23 of its business and the exercise of all other rights and

1 powers granted to the Corporation by this part.

2 (e) BYLAWS.—As soon as practicable but not later than
3 180 days after the date of enactment of this Act, the board
4 of directors shall adopt initial bylaws and rules relating to
5 the conduct of the business of the Corporation. Thereafter,
6 the board of directors may alter, supplement, or repeal any
7 existing bylaw or rule, and may adopt additional bylaws and
8 rules, from time to time as may be necessary. The Secretary
9 of Labor shall cause a copy of the bylaws of the Corporation
10 to be published in the Federal Register not less than
11 annually.

12 CONDITIONS OF INSURANCE

13 SEC. 403. The Corporation shall insure participants and
14 beneficiaries of plans covered under this part against the
15 loss of benefits (as defined in section 409) which arise from
16 the complete or partial termination of such plans, as deter-
17 mined by the Secretary of Labor in accordance with sections
18 112, 411, and 501 of this Act. For purposes of this part, a
19 partial termination shall not be deemed to have occurred if,
20 as a result of actions taken by the Secretary pursuant to
21 sections 112, 411, and 501 of this Act, all nonforfeitable
22 benefits of participants and beneficiaries to which the partial
23 termination applies continue as obligations of the plan or
24 are otherwise satisfied.

1 PLAN TERMINATION INSURANCE FUNDS

2 SEC. 404. (a) FUNDS ESTABLISHED.—The Corporation
3 shall establish two Plan Termination Insurance Funds. The
4 Single Employer Primary Trust Fund shall relate to single
5 employer plans. The Multiemployer Trust Fund shall relate
6 to multiemployer plans. The Corporation may establish
7 a Single Employer Optional Trust Fund if it finds that such
8 a fund is feasible, and may establish one or more additional
9 trust funds as provided for in section 409. No trust fund,
10 established by or under this subsection, or benefits insured
11 thereunder, may at any time be merged with any other
12 trust fund so established nor may the assets of any trust fund
13 so established be used to satisfy liabilities with respect to any
14 other trust fund so established. All amounts received directly
15 or indirectly as premiums, assessments, or fees, and any
16 other money, property, or assets derived from the operation
17 of the Corporation, shall be deposited in the appropriate
18 fund as determined by the board of directors. All claims,
19 expenses, and payments pursuant to the operation of the
20 Corporation shall be paid only from the appropriate fund as
21 determined by the board of directors, subject to the provi-
22 sions of this subsection and section 409.

23 (b) INVESTMENT OF AMOUNTS IN FUNDS.—Amounts
24 in the funds may be invested in—

25 (1) obligations of the United States,

1 (2) obligations guaranteed as to principal and in-
2 terest by the United States, and
3 (3) other assets which the board of directors of the
4 Corporation determines by rule or by law to be per-
5 missible investments and which are not inconsistent with
6 the other provisions of this part.
7 (c) BORROWING AUTHORITY.—The Corporation may
8 issue to the Secretary of the Treasury notes or other obliga-
9 tions in an aggregate amount of not to exceed $100,000,000,
10 in such forms and denominations, bearing such maturities,
11 and subject to such terms and conditions as may be pre-
12 scribed by the Secretary of the Treasury. Such notes or other
13 obligations shall bear interest at a rate determined by the
14 Secretary of the Treasury, taking into consideration the cur-
15 rent average market yield on outstanding marketable obliga-
16 tions of the United States of comparable maturities during
17 the month preceding the issuance of such notes or other
18 obligations of the Corporation. The Secretary of the Treasury
19 shall purchase any notes or other issued by the Corpora-
20 tion under the preceding sentence, and for that purpose he
21 is authorized to use as a public debt transaction the proceeds
22 from the sale of any securities issued under the Second
23 Liberty Bond Act, as amended, and the purposes for which
24 securities may be issued under that Act, as amended, are
25 extended to include any purchase of such notes and obliga-

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1 tions. The Secretary of the Treasury may at any time sell
2 any of the notes or other obligations acquired by him under
3 this subsection. All redemptions, purchases, and sales by the
4 Secretary of the Treasury of such notes or other obligations
5 shall be treated as public debt transactions of the United
6 States.

7 PREMIUM SCHEDULES

8 SEC. 405. (a) IN GENERAL.—The Corporation shall
9 prescribe such separate schedules for the premiums to be paid
10 by single employer and multiemployer pension plans as
11 may be necessary to carry out its functions under this part,
12 taking into account the insurance coverage to be provided
13 and the administrative and operational costs of the Corpora-
14 tion.

15 (b) PREMIUMS TO BE UNIFORM.—The premium rates
16 charged by the Corporation for any period shall be uniform
17 for all single employer plans insured by the Corporation
18 and shall be uniform for all multiemployer plans insured by
19 the Corporation, except as provided in subsection (c) of
20 this section.

21 (c) BASIS FOR SETTING PREMIUMS.—

22 (1) INITIAL PREMIUMS.—Unless a revised pre-
23 mium schedule takes effect under section 406, the premi-
24 um charged any plan insured by the Corporation for
25 any period shall be made up of two parts—

1 (A) a rate applicable to the excess, if any, of
2 the present value of the benefits of a plan which
3 are insured (as defined in section 409 (b)) over the
4 value of the assets of a plan, which rate shall not
5 exceed 0.1 per centum for single employer plans
6 and shall not exceed 0.025 per centum for multi-
7 employer plans, and
8 (B) an additional charge based on a rate appli-
9 cable to the present value of the benefits of a plan
10 which are insured (as defined in section 409 (b)),
11 which rate shall be determined separately for single
12 employer and multiemployer plans.
13 The rate for the additional charge referred to in sub-
14 paragraph (B) shall be set by the Corporation for every
15 year at a level (separately for single employer and
16 multiemployer plans) which the Corporation estimates
17 will yield total revenue approximately equal to the total
18 revenue to be derived by the Corporation from the pre-
19 miums referred to in subparagraph (A).
20 (2) SUPPLEMENTAL PREMIUMS.—The premium
21 charged any plan for insurance of benefits or against loss
22 as provided in section 409 (c) shall be based on the risk
23 insured and shall reflect the actual and projected experi-
24 ence losses incurred by the Corporation in regard to such
25 risks as determined by the Corporation.

1 (3) GRADED PREMIUM SCHEDULE.—The premium
2 rates applicable to benefits insured under section 409 (b)
3 shall take effect in accordance with the following table
4 for any plan which is not a successor plan covering
5 some or all of the same participants:

Number of years plan in effect:	The applicable premium rate or rates shall be multiplied by the following percentage:
1	50
2	60
3	70
4	80
5	90
6 or more	100.

6 (4) VALUE OF ASSETS.—The Corporation shall
7 adopt rules relating to the valuation of a plan's assets
8 for premium purposes and shall file a copy of such
9 rules with the Secretary. To the extent deemed feasible
10 by the Corporation, such rules shall—
11 (A) require securities for which an available
12 market exists to be valued at fair market value or
13 the average of fair market value over the eighteen-
14 month period ending with the month of valuation,
15 (B) permit the value of a bond or other evi-
16 dence of indebtedness which is not in default as to
17 principal or interest, to be determined on an
18 amortized basis running from initial cost at purchase
19 to par value at maturity or earliest call date or on
20 the basis of the commuted value of the future

1 income it will produce discounted at the rate of
2 interest assumed in the calculation of plan liabilities,
3 (C) require other assets to be valued on a
4 reasonable and consistent basis (which takes into
5 account fair market value where applicable).
6 (5) PRESENT VALUE OF INSURED BENEFIT.—The
7 Corporation shall adopt rules relating to the valuation of
8 a plan's insured benefits for premium purposes and shall
9 file a copy of such rules with the Secretary. To the ex-
10 tent deemed feasible by the Corporation such rules
11 shall—
12 (A) recognize that under this title a complete
13 actuarial valuation of a plan's liabilities is required
14 at least every three years, and should set standards
15 for acceptable approximation methods to be used
16 for interim years, and
17 (B) require that the present value of insured
18 benefits be calculated using appropriate rates of
19 mortality and interest which will result in equitable
20 treatment as between plans in similar circumstances.
21 (6) STATEMENT OF COMPLIANCE.—The Cor-
22 poration shall require a report to be submitted which
23 contains a statement by an enrolled actuary, as defined
24 in section 104(a)(4)(C) of this Act, that the rules of

1 the Corporation have been complied with regarding the
2 calculation of any premiums under this section.
3 (7) INTEREST.—The Corporation may require that
4 interest at appropriate rate or rates be charged on un-
5 paid, past due, premiums in addition to premiums other-
6 wise calculated under this section.
7 (8) OPTIONAL TRUST FUND PREMIUMS.—The
8 Corporation shall establish rules which shall apply to the
9 premium to be charged for plans to which the Single
10 Employer Optional Trust Fund applies. Such rules shall
11 include the following:
12 (A) The Corporation shall require each plan to
13 make an election whether to continue to be treated
14 as a Primary Trust Fund plan or as an Optional
15 Trust Fund plan, for premium purposes under this
16 section and for purposes of the employer liability
17 provisions under section 414, at the later of—
18 (i) three years after the effective date of
19 this part, or
20 (ii) the date the plan is first covered under
21 this title. (For purposes of this paragraph the
22 plan and any successor plan covering some or all
23 of the same participants shall be deemed to be
24 the same plan.)

1 Such election by a plan shall be irrevocable except
2 with the concurrence of the Corporation in accord-
3 ance with rules adopted by the Corporation which
4 shall be consistently and uniformly applied to all
5 plans making such election.
6 (B) The premiums charged plans electing
7 Optional Trust Fund treatment shall be based
8 upon—
9 (i) the present value of the benefits of a
10 plan which are insured under this part, and
11 (ii) the excess, if any, of the amount deter-
12 mined under clause (i) over the value of the
13 assets of a plan,
14 and shall be based on the actual and projected expe-
15 rience of all such plans.
16 (C) The Optional Trust Fund, at the time plans
17 are first permitted to elect such option, shall be
18 credited with that portion of the premiums and in-
19 come, as determined by the Corporation, which up
20 to that time were allocated to the Single Employer
21 Optional Trust Fund.
22 REVISED PREMIUM SCHEDULE PROCEDURE
23 SEC. 406. The Corporation may revise any premium
24 schedule in order to charge premiums to plans insured under
25 the Single Employer or Multiemployer Trust Funds in a
26 manner other than that provided in section 405(c)(1),

1 whenever it determines that revised rates are necessary,
2 but a revised schedule shall apply only to plan years begin-
3 ning more than thirty days after the date on which the
4 Congress approves such revised schedule by a concurrent
5 resolution originating in the House of Representatives. In
6 order to place a revised premium schedule in effect, the
7 Corporation shall transmit the proposed schedule, its pro-
8 posed effective date, and the reasons for its proposal to the
9 Committee on Education and Labor of the House of Rep-
10 resentatives.

11 COOPERATION AND ASSISTANCE OF GOVERNMENT
12 AGENCIES

13 SEC. 407. Section 506(a) of this Act shall apply in
14 carrying out functions of the Corporation in the same man-
15 ner as it applies in carrying out functions of the Secretary.

16 REPORTS

17 SEC. 408. The Secretary may by regulation require that
18 reports which are filed under sections 104 and 105 of this
19 Act by plans to which this part applies include such addi-
20 tional information as he deems necessary to carry out this
21 part.

22 COVERAGE

23 SEC. 409. (a) PLANS COVERED.—
24 (1) MANDATORY COVERAGE.—Subject to section
25 416, this title shall apply to a plan which—

1 (A) is a plan covered under part 3 of this
2 subtitle (including plans covered by reason of sec-
3 tion 305(c)(1)), and
4 (B) which covers more than twenty-five par-
5 ticipants (where at least ten have obtained non-
6 forfeitable benefits) at all times during any period
7 of five consecutive plan years, and
8 (C) which has a vested benefit ratio of 10
9 per centum or greater when the conditions under
10 (A) and (B) are met. For purposes of this sub-
11 paragraph vested benefit ratio means the value of
12 assets (as determined under section 405(c)(4))
13 over the present value of insured benefits (as de-
14 termined under section 405(c)(5)).
15 A plan once covered under this paragraph shall con-
16 tinue to be covered except as provided under rules set
17 by the corporation.
18 (2) VOLUNTARY COVERAGE.—Subject to section
19 416, the Corporation may insure plans to which part 3
20 applies (including plans covered by reason of section
21 305(c)(1)) and which are registered under section
22 512 of this Act and qualified under section 401(a) of
23 the Internal Revenue Code of 1954, but which are not
24 otherwise covered under this part to the extent that such
25 plans meet underwriting standards (which shall provide

1 that such plans in the aggregate shall not unreasonably
2 increase the losses incurred by the Corporation so as to
3 require unreasonable increases in the premium rates
4 charged plans covered under paragraph (1)) as set
5 forth in rules established by the Corporation.

6 (3) TRUST FUND STATUS.—The Corporation shall
7 insure covered benefits, as determined in this section, for
8 participants and beneficiaries of single employer plans
9 and shall pay such benefits from the Single Employer
10 Trust Fund, except as provided in subsection (c) of this
11 section. The Corporation shall insure covered benefits, as
12 determined in this section, for participants and bene-
13 ficiaries of multiemployer plans and shall pay such
14 benefits from the Multiemployer Trust Fund, except as
15 provided in subsection (c) of this section.

16 (b) BENEFITS COVERED.—Subject to the limitations in
17 subsection (d) of this section, the Corporation shall guar-
18 antee the payment of—

19 (1) any rights under the plan in a regular retire-
20 ment benefit, or in an equivalent benefit, which are
21 nonforfeitable (other than by reason of such termina-
22 tion) according to the schedule in section 203 in effect
23 for such plan on such termination date (or, if earlier, the
24 disqualification date within the meaning of subsection
25 (h) of this section), and

1 (2) any contingent rights under the plan to bene-
2 fits which are ancillary to the retirement benefits if, on
3 such termination date (or, if earlier, such disqualifica-
4 tion date), all contingencies (other than the passage of
5 time) on which the payment of such ancillary benefits
6 depends have been satisfied.

7 (c) SUPPLEMENTAL INSURED BENEFITS.—The Corpo-
8 ration shall undertake a study to determine under what condi-
9 tions losses of the plan or benefits other than those described
10 in section (b) can be insured. To the extent that the Corpo-
11 ration determines that losses of the plan, or additional bene-
12 fits are insurable, the Corporation shall prescribe the terms
13 and conditions of such insurance and the premiums charged
14 for insuring such benefits or against such losses shall be
15 subject to the requirements of section 405(c)(2). Such
16 additional benefits shall not be paid from the Single Em-
17 ployer Trust Fund or the Multiemployer Trust Fund.

18 (d) LIMITATION ON INSURANCE.—The rights of par-
19 ticipants and beneficiaries of a plan which is a member of the
20 Corporation shall be insured by the Corporation only to the
21 extent that—

22 (1) such rights as provided for in the plan do not
23 exceed, with respect to benefits insured under subsection
24 (b) of this section:

25 (A) in the case of a right to a monthly retire-

1 ment or disability benefit for the employee himself,
2 the actuarial value of a monthly benefit (with no
3 ancillary benefits) in the form of a single life
4 annuity commencing at age 65 equal to $20 per
5 month per year of credited service, where such $20
6 is kept up-to-date according to the annual change
7 in the average of the taxable wages of all employees
8 as reported to the Secretary of Health, Education,
9 and Welfare for the first calendar quarter of the
10 calendar year prior to which the determination is
11 made. For purposes of this subparagraph, the term
12 "year of credited service" shall be defined in accord-
13 ance with rules set by the Corporation which shall
14 take into account the manner in which a plan in
15 practice credits service for benefit purposes.
16 (B) in the case of a right of one or more de-
17 pendents or members of the participant's family,
18 or in the case of a right to a lump-sum survivor
19 benefit on account of the death of a participant, an
20 amount no greater than the amount determined
21 in a manner consistent with clause (A);
22 (2) the plan is terminated more than five years
23 after the date it became a member of the Corporation,
24 except that the board of directors may in its discretion

1 authorize insurance payments for such amounts as may
2 be reasonable to any plan terminated in less than five
3 years after the date it became a member of the Corpora-
4 tion where—
5 (A) such plan has been established and main-
6 tained for more than five years prior to its termi-
7 nation;
8 (B) the board of directors of the Corporation is
9 satisfied that during the period the plan was not a
10 member of the Corporation, it was in substantial
11 compliance with the provisions of this Act; and
12 (C) such payments will not prevent equitable
13 underwriting of losses of nonforfeitable benefits
14 arising from plan terminations otherwise covered
15 by this title;
16 (3) such rights were created by a plan amendment
17 which was adopted and which took effect more than
18 five years immediately preceding termination of such
19 plan;
20 (4) such rights do not accrue to the interest of a
21 participant who is a substantial owner as defined in
22 paragraph (g) with respect to a plan; and
23 (5) the maximum guaranteed benefit amounts pro-

1 vided in paragraph (1) shall take effect in accordance
2 with the following table:

If the plan has been in existence for—	The guarantee provided by this part shall be the following percentage of the maximum guaranteed benefit amount provided by paragraph (1):
Less than 2 years	20
At least 2 but less than 3 years	40
At least 3 but less than 4 years	60
At least 4 but less than 5 years	80
5 years or more	100.

3 (e) CERTAIN SUCCESSOR PLANS.—For purposes of
4 subsection (d), the period a successor plan has been in effect
5 includes the period during which the predecessor plan was
6 in effect.

7 (f) MAXIMUM AMOUNT PAYABLE UNDER MORE
8 THAN ONE PLAN.—Notwithstanding any other provision of
9 this section, no person may receive any amount from the
10 Corporation with respect to any individual if the receipt of
11 such amount would cause the aggregate benefits received by
12 all persons from the Corporation with respect to such individ-
13 ual to have an actuarial value in excess of the limitations on
14 benefits provided by subsection (d) (1) (A) (determined
15 as of the date of the most recent termination of a plan in
16 which such individual was a participant).

17 (g) BENEFITS PAYABLE WITH RESPECT TO CERTAIN
18 SUBSTANTIAL OWNERS NOT INSURED.—

19 (1) IN GENERAL.—No benefit payable under a
20 plan shall be insured under this title with respect to any

1 individual who, on any day during the plan year in
2 which the plan terminates or during any of the five
3 immediately preceding plan years, was a substantial
4 owner with respect to such plan.

5 (2) SUBSTANTIAL OWNER DEFINED.—For pur-
6 poses of this title, the term "substantial owner" means
7 any individual who—

8 (A) owns the entire interest in an unincor-
9 porated trade or business,

10 (B) in the case of a partnership is a partner
11 who owns more than 5 per centum of either the
12 capital interest or the profits interest in such part-
13 nership, or

14 (C) in the case of a Corporation, owns more
15 than 5 per centum in value of either (i) the voting
16 stock of such Corporation, or (ii) all the stock of
17 such Corporation.

18 (3) CONSTRUCTIVE OWNERSHIP.—For purposes of
19 paragraph (2) (C), the constructive ownership rules of
20 section 1563 (e) of the Internal Revenue Code of 1954
21 shall apply (determined without regard to section 1563
22 (e) (30) (C)).

23 (h) EFFECT OF PLAN DISQUALIFICATION.—

24 (1) IN GENERAL.—If the Secretary of the Treasury
25 or his delegate determines that any plan does not satisfy

1 the requirements for being a qualified retirement plan,
2 no benefits accrued under such plan after the disqualifi-
3 cation date for the plan shall be guaranteed under this
4 title.

5 (2) DISQUALIFICATION DATE.—For purposes of
6 this section, the term "disqualification date" means—

7 (A) except as provided in subparagraph (B),
8 the day on which notice of the determination re-
9 ferred to in paragraph (1) is mailed to the em-
10 ployer, and

11 (B) in the case of a determination arising in
12 whole or in part from the adoption of an amendment
13 to the plan, the day on which such amendment was
14 adopted.

15 (3) SPECIAL RULES.—This subsection shall not
16 apply—

17 (A) if the determination referred to in para-
18 graph (1) is erroneous, and

19 (B) in the case of an amendment to a plan,
20 if such amendment—

21 (i) is revoked as of the date it first took
22 effect, or

23 (ii) is modified as of the date it first took
24 effect in such a way that the Secretary of the

1 Treasury or his delegate determines that the
2 plan is again a qualified retirement plan.

3 REPORTABLE EVENTS

4 SEC. 410. (a) REPORT OF EVENT.—Within thirty days
5 after the plan administrator knows or has reason to know
6 that a reportable event has occurred, he shall notify the
7 Corporation that such event has occurred.

8 (b) OCCURRENCE OF REPORTABLE EVENT.—For pur-
9 poses of this section a reportable event occurs—

10 (1) DISQUALIFICATION OF PLAN.—When the
11 Secretary of the Treasury or his delegate issues notice
12 that a plan has ceased to be a qualified retirement plan
13 or if the Secretary of Labor determines the plan is not in
14 compliance with this title.

15 (2) BENEFIT DECREASED.—When an amendment
16 of the plan is adopted if, under the amendment, the bene-
17 fit payable with respect to any participant may be de-
18 creased.

19 (3) DECREASE IN PARTICIPANTS.—When the num-
20 ber of active participants is less than 80 per centum of
21 the number of such participants at the beginning of the
22 plan year, or is less than 75 per centum of the number
23 of such participants at the beginning of the previous plan
24 year.

1 (4) TERMINATION UNDER INTERNAL REVENUE
2 CODE.—When the Secretary of the Treasury or his dele-
3 gate determines that there has been a termination or
4 partial termination of the plan within the meaning of
5 section 411 (d) (3) of the Internal Revenue Code of
6 1954.

7 (5) FAILURE TO MEET MINIMUM FUNDING
8 STANDARDS.—When the plan fails to meet the minimum
9 funding standards under part 3 of this subtitle.

10 (6) PLAN UNABLE TO PAY BENEFITS.—When a
11 plan is unable to pay benefits thereunder when due.

12 (7) CERTAIN DISTRIBUTIONS TO SUBSTANTIAL
13 OWNERS.—When there is a distribution under a plan
14 to a participant who is a substantial owner (within the
15 meaning of section 243 (f) of the Internal Revenue
16 Code of 1954) if—

17 (A) such distribution has a value of $10,000
18 or more;

19 (B) such distribution is not made by reason
20 of the death of the participant; and

21 (C) immediately after the distribution, the
22 plan has nonforfeitable benefits which are not
23 funded.

24 For purposes of this paragraph, all distributions to a

1 participant within any twenty-four-month period shall
2 be treated as one distribution.
3 (8) CERTAIN REPORTS AND HEARINGS.—When a
4 plan files a report required under section 304 (c) of this
5 title or when a hearing is held in regard to a variation
6 to be granted by the Secretary of Labor under section
7 501 of this title.
8 (9) OTHER EVENTS.—When any other event
9 occurs which the Corporation determines may be
10 indicative of a need to terminate the plan.
11 (c) NOTIFICATION BY SECRETARY OF THE TREAS-
12 URY.—The Secretary of the Treasury or his delegate shall
13 notify the Corporation—
14 (1) whenever a reportable event described in para-
15 graph (1), (4), or (5) of subsection (b) occurs, or
16 (2) whenever any other event occurs which the
17 Secretary of the Treasury or his delegate believes indi-
18 cates that the plan is not sound.
19 (d) NOTIFICATION BY SECRETARY OF LABOR.—The
20 Secretary of Labor shall notify the Corporation—
21 (1) wherever a reportable event described in para-
22 graph (1), (5), or (8) of subsection (b) occurs, or
23 (2) whenever any other event occurs which the
24 Secretary of Labor believes indicates that the plan is
25 not sound.

1 TERMINATION OF PLAN

2 SEC. 411. (a) If on application of the administrator
3 of a plan insured under this part, any participant in or bene-
4 ficiary of such plan, or, on his own motion, the Secretary
5 determines after a hearing under subsection (d) that—

6 (1) the plan has not met the minimum funding
7 requirements of section 302,

8 (2) the plan is unable to pay benefits when due,
9 or

10 (3) the probable long-run loss of the Corporation
11 may reasonably be expected to increase unreasonably if
12 the plan is not terminated;

13 he may order that the plan be terminated in accordance with
14 subsection (c).

15 (b) If an employer who sponsors a plan which is not
16 collectively bargained, or in the case of a collectively bar-
17 gained plan, if the employer or the employee organization
18 which are parties to the collective bargaining agreement ap-
19 ply to the Secretary for authority to terminate a plan insured
20 under this part, the Secretary may terminate such plan in
21 accordance with subsection (c).

22 (c) In any case in which termination of a plan is au-
23 thorized under subsection (a) or (b), the Secretary shall,
24 after a hearing in accordance with subsection (d), provide
25 for termination of such plan in whichever of the following

1 ways he determines will best protect the interest of partici-
2 pants and beneficiaries and the Corporation:
3 (1) He may order that the Corporation assume the
4 assets of the plan to distribute such assets in accordance
5 with section 112 (subject to section 501), and to pay
6 insurance benefits in accordance with this part.
7 (2) He may order continuation of the plan until all
8 liabilities are satisfied, with separate administration by
9 a receiver nominated by the Corporation and appointed
10 by the Secretary. If a separate receiver is appointed, no
11 benefits may accrue or become nonforfeitable after the
12 date of termination, the amount of benefits payable
13 under the plan shall not be limited by the amount of
14 insurable benefits, and the plan may be ended under
15 paragraph (1) after the receiver is appointed if the
16 Secretary so directs after a hearing under subsection
17 (d) of this section.
18 (3) The Secretary may order for a distribution of
19 assets under section 112 without ending the plan un-
20 der paragraph (1) or appointment of a receiver under
21 paragraph (2).
22 (4) He may order an alternative method of com-
23 pliance which is equitable to all concerned.
24 (d) The hearing referred to in subsection (b) shall
25 be commenced upon application of a plan administrator, any

1 participant or beneficiary, an employer or other plan spon-
2 sor, the Corporation, or, on the motion of the Secretary,
3 Such hearing shall be on the record, with notice and op-
4 portunity to be heard by all interested parties. The Secre-
5 tary is directed to give due regard to protecting the interests
6 of the Corporation and shall take no action which would
7 jeopardize the equitable underwriting of liabilities of other
8 pension plans by the Corporation (or the objectives of the
9 Corporation specified in section 402 (a) of this Act) in any
10 action taken under this section.

11 MANAGEMENT FUNCTIONS

12 SEC. 412. (a) TRANSFER OF FUNDS TO THE CORPORA-
13 TION.—The Secretary shall have authority to—

14 (1) transfer the funds of the terminated plan to
15 which section 411 (c) (1) applies to the Corporation
16 for purposes of management, payment of benefits, to
17 participants and beneficiaries and, to the extent neces-
18 sary for such payment, liquidation; and

19 (2) retain outside financial advisors or consultants
20 to manage, administer, or invest the funds of a termi-
21 nated plan to which section 411 (c) (1) applies on behalf
22 of the Corporation subject to such rules and guidelines
23 as the Secretary shall determine.

24 (b) OTHER ALTERNATIVES.—The Secretary may take
25 such other action consistent with actions which may be

1 taken under section 411 (c), including any combination of
2 the foregoing, as may be appropriate to assure equitable
3 arrangements for payments of vested benefits to participants
4 and beneficiaries under the plan.

5 FUNCTIONS OF SECRETARY

6 SEC. 413. (a) EXAMINATION OF THE CORPORATION,
7 ETC.—The Secretary may make such examinations and in-
8 spections of the Corporation and require the Corporation to
9 furnish such reports and records or copies thereof as the
10 Secretary may consider necessary or appropriate in the
11 public interest or to effectuate the purposes of this Act.

12 (b) REPORTS FROM THE CORPORATION.—As soon
13 as practicable after the close of each fiscal year, the Corpo-
14 ration shall submit to the Secretary a written report relative
15 to the conduct of its business, and the exercise of other
16 rights and powers granted by this Act, during such fiscal
17 year. Such report shall include financial statements setting
18 forth the financial position of the Corporation at the end of
19 such fiscal year and the results of its operations (including
20 the source and application of its funds) for such fiscal year
21 and shall include an actuarial evaluation of the expected
22 operations and status of the trust funds over a future period
23 of no less than 5 years including a detailed statement of the
24 actuarial assumptions and methodology used in making such
25 evaluation. The financial statements so included shall be

1 examined by a Comptroller General. The Secretary shall
2 transmit such report to the President and the Congress
3 with such comment thereon as the Secretary may deem
4 appropriate.

5 EMPLOYER LIABILITY

6 SEC. 414. (a) Subject to subsection (e), where the
7 employer or employers contributing to the terminating plan
8 or who terminated the plan are not insolvent (within the
9 meaning of section 1(19) of the Bankruptcy Act), such
10 employer or employers (or any successor in interest to such
11 employer or employers) shall be liable to reimburse the
12 Corporation for any insurance benefits paid by the Corpora-
13 tion to the beneficiaries of such terminated plan to the extent
14 provided in this section.

15 (b) An employer, determined by the Corporation to be
16 liable for reimbursement under subsection (a), shall be liable
17 to pay 100 per centum of the present value of employer
18 underfunding of the terminated plan, as of the date of such
19 termination. In no event, however, shall the employer's
20 liability exceed 50 per centum of the net worth of such
21 employer. For purposes of this subsection, the term "present
22 value of employer underfunding" means the lesser of—

23 (1) the amount of aggregate insurance benefits
24 paid, or

25 (2) the present value of accrued benefits under the

1 plan less the sum of the current value of the assets of
2 the plan plus the present value of expected employee
3 contributions to the plan.
4 (c) The Corporation is authorized to make arrangements
5 with employers, liable under subsection (a), for reimburse-
6 ment of insurance paid by the Corporation, including ar-
7 rangements for deferred payment on such terms and for such
8 periods as are deemed equitable and appropriate.
9 (d) (1) If any employer or employers liable for any
10 amount due under subsection (a) of this section neglects or
11 refuses to pay the same after demand, the amount (including
12 interest) shall be a lien in favor of the United States upon
13 all property and rights in property, whether real or personal,
14 belonging to such employer or employers.
15 (2) The lien imposed by paragraph (1) of this sub-
16 section shall not be valid as against a lien created under
17 section 6321 of the Internal Revenue Code of 1954.
18 (3) Notice to the lien imposed by paragraph (1) of
19 this subsection shall be filed in a manner and form prescribed
20 by the Corporation. Such notice shall be valid notwithstand-
21 ing any other provision of law regarding the form and
22 content of a notice of lien.
23 (4) The Corporation shall promulgate rules and regula-
24 tions with regard to the release of any lien imposed by para-
25 graph (1) of this subsection.

1 (e) (1) An employer who elected coverage under the
2 Single Employer Optional Trust Fund shall not be subject
3 to any liability under this section.
4 (2) No employer shall be liable under this section by
5 reason of his contributions to or sponsorship of a multi-
6 employer plan.
7 (f) VOLUNTARY CURTAILMENT OF PLAN.—Notwith-
8 standing any other provision of this title or of section 410 or
9 411 of the Internal Revenue Code of 1954, a pension plan
10 insured under this part may be amended so that neither
11 accrued benefits nor nonforfeitable benefits will accumulate
12 after the date of the amendment. Such amendment shall not
13 by itself be sufficient to cause a termination of such plan or
14 to invoke employer liability except where the plan has not
15 complied with section 302 in the plan year in which the
16 amendment is made or in any susbequent year.
17 ALLOCATION OF ASSETS
18 SEC. 415. For purposes of determining the employer
19 liability under section 414 and the payments and distri-
20 butions to be made under section 411, if any, the Secretary,
21 the plan administrator, the Corporation, or the receiver,
22 as the case may be, shall make such calculation or distribute
23 such assets in accordance with section 112 (subject to any
24 variance under section 501).

1 EFFECTIVE DATE

2 SEC. 416. (a) IN GENERAL.—Except as provided in
3 subsection (b), this part shall take effect on the date of
4 enactment of this Act.

5 (b) TERMINATIONS.—Premiums and benefits payable
6 under this part as a result of plan terminations shall apply
7 with respect to plan years beginning after June 1, 1974,
8 except that in the case of any multiemployer plan, this part
9 shall become effective for the first plan year to which part
10 3 becomes effective by operation of section 305(b)(2).

11 PART 5—GENERAL PROVISIONS

12 ALTERNATIVE METHODS OF COMPLIANCE

13 SEC. 501. (a) The Secretary on his own motion or
14 after having received the petition of an administrator may,
15 after giving interested persons an opportunity for a hearing,
16 prescribe an alternative method for satisfying any require-
17 ment of part 2, 3, or 4, or section 105(b) or 112, with
18 respect to any pension plan or any type of pension plan
19 subject to such requirement if he determines on the record
20 of such hearing (1) that the use of such alternative method
21 is necessary or appropriate to carry out the purposes of
22 this title and that it provides adequate protection to the
23 participants and beneficiaries in the plan, (2) that the
24 application of such requirement of part 2, 3, or 4 or section
25 105(b) or 112, would—

26 (A) increase the costs of the parties to the plan to

1 such an extent that there would result a substantial
2 risk to the voluntary continuation of the plan,
3 (B) result in a substantial or inequitable curtail-
4 ment of pension benefit levels or the levels of employees'
5 compensation, or
6 (C) impose unreasonable administrative burdens
7 with respect to the operation of the plan, having due
8 regard to the particular characteristics of the plan or
9 the type of plan involved; and
10 (3) that the application of part 2, 3, or 4 or section 105 (b)
11 or 112, or discontinuance of the plan would be adverse to
12 the interests of plan participants in the aggregate.
13 (b) If the Secretary prescribes an alternative method
14 under subsection (a) for satisfying the requirements of sec-
15 tion 302 of this Act, then during the period for which such
16 alternative method is in effect, no amendment to the plan
17 may be adopted which increases liabilities of the plan by rea-
18 son of (1) any increase in benefits, (2) any change in the
19 accrual of benefits, or (3) any change in the rate at which
20 benefits become nonforfeitable under the plan.
21 STUDIES
22 SEC. 502. (a) The Secretary is authorized and directed
23 to undertake research studies relating to pension plans, in-
24 cluding but not limited to (1) the effects of this title upon
25 the provisions and costs of pension plans, (2) the role of
26 private pensions in meeting the economic security needs of

1 the Nation, and (3) the operation of private pension plans
2 including types and levels of benefits, degree of reciprocity
3 or portability, and financial characteristics and practices,
4 and methods of encouraging the growth of the private pen-
5 sion system.

6 (b) The Secretary is authorized and directed to co-
7 operate with the Congress and its appropriate committees,
8 subcommittees, and staff in supplying data, and any other
9 information, personnel, or resources required by the Congress
10 in any study, examination, or report by the Congress relat-
11 ing to pension and retirement benefit plans established or
12 maintained by States or their political subdivisions.

13 (c) (1) The Committee on Education and Labor and
14 the Committee on Ways and Means of the House of Repre-
15 sentatives shall study retirement plans established and main-
16 tained or financed (directly or indirectly) by the Govern-
17 ment of the United States, by any State (including the Dis-
18 trict of Columbia) or political subdivision thereof, or by any
19 agency or instrumentality of any of the foregoing. Such
20 study shall include an analysis of—

21 (A) the adequacy of existing levels of participa-
22 tion, vesting, and financing arrangements,

23 (B) existing fiduciary standards,

24 (C) the unique circumstances affecting mobility
25 of government employees and individuals employed

1 under Federal procurement, construction, or research
2 contracts or grants, and
3 (D) the necessity for Federal legislation and stand-
4 ards with respect to such plans.
5 In determining whether any such plan is adequately financed,
6 each committee shall consider the necessity for minimum
7 funding standards, as well as the taxing power of the gov-
8 ernment maintaining the plan.
9 (2) Not later than December 31, 1976, the Commit-
10 tee on Education and Labor and the Committee on Ways
11 and Means shall each submit to the House of Representatives
12 the results of the studies conducted under this subsection,
13 together with such recommendations as may be appropriate.
14 ENFORCEMENT
15 SEC. 503. (a) Any person who willfully—
16 (1) violates any provision of this title (other than
17 section 113 or 511), or any order issued under any
18 such provision; or any requirement of an alternative
19 method prescribed under section 501;
20 (2) makes, passes, utters, or publishes any state-
21 ment in any application, report, document, account, or
22 record filed or kept or required to be filed or kept un-
23 der the provisions of this title, or any rule, regulation,
24 variation, or order under this title, knowing such state-

1 ment or entry to be false or misleading in any material
2 respect;
3 (3) forges or counterfeits any instrument, paper, or
4 document, or utters, publishes, or passes as true, any
5 instrument, paper, or document, knowing it to have been
6 forged or counterfeited, for the purposes of influencing in
7 any way the action of the Secretary under this title;
8 shall upon conviction be fined not more than $10,000 or
9 imprisoned not more than five years, or both, except that in
10 the case of such violation by a person not an individual, the
11 fine imposed upon such person shall be a fine not exceeding
12 $200,000.
13 (b) Any plan administrator who fails or refuses to com-
14 ply with a request as provided in section 105 (b) (4) within
15 thirty days (unless such failure or refusal results from matters
16 reasonably beyond the control of the administrator) by mail-
17 ing the material requested to the last known address of the
18 requesting participant or beneficiary may in the court's dis-
19 cretion be personally liable to such participant or beneficiary
20 in the amount of up to $50 a day from the date of such fail-
21 ure or refusal, and the court may in its discretion order such
22 other relief as it deems proper.
23 (c) The Secretary shall have power in order to
24 determine whether any person has violated or is about to
25 violate any provision of this title or any rule, regulation, or

1 order thereunder (including an alternative method prescribed
2 under section 501), to make an investigation and in connec-
3 tion therewith he may require the filing of supporting
4 schedules of the information required to be furnished under
5 section 103 or 104 of this Act and may, where he has
6 reasonable cause, enter such places, inspect such records and
7 accounts, and question such persons as he may deem neces-
8 sary to enable him to determine the facts relative to such
9 investigation. The Secretary may publish and make available
10 to any interested person or official, information concerning
11 any matter which may be the subject of investigation, and
12 may prepare a report of any investigation undertaken by
13 him. Such report may contain a record of any facts, condi-
14 tions, practices, or other matters discovered during the course
15 of his investigation and may be published at any time fol-
16 lowing commencement of such investigation.

17 (d) For the purposes of any investigation provided for
18 in this title, the provisions of sections 9 and 10 (relating to
19 the attendance of witnesses and the production of books,
20 records, and documents) of the Federal Trade Commission
21 Act (15 U.S.C. 49, 50) are hereby made applicable (with-
22 out regard to any limitation in such sections respecting per-
23 sons, partnerships, banks, or common carriers) to the juris-
24 diction, powers, and duties of the Secretary or any officers
25 designated by him.

1 (e) Civil actions under this title may be brought—
2 (1) by a participant or beneficiary—
3 (A) for the relief provided for in subsection
4 (b) of this section, or
5 (B) to recover benefits due him under the terms
6 of his plan or to clarify his rights to future benefits
7 under the terms of the plan;
8 (2) by the Secretary, or by a participant, benefici-
9 ary or fiduciary for appropriate relief under section 111
10 (d); or
11 (3) by the Secretary, or by a participant, bene-
12 ficiary, or fiduciary to enjoin any act or practice which
13 violates any provision of this title.
14 (f) (1) An employee benefit plan may sue or be sued
15 under this title as an entity. Service of summons, subpena,
16 or other legal process of a court upon trustee or adminis-
17 trator of an employee benefit plan in his capacity as such
18 shall constitute service upon the employee benefit plan.
19 (2) Any money judgment under this title against an
20 employee benefit plan shall be enforceable only against a
21 plan as an entity and shall not be enforceable against any
22 other person unless liability against such person is established
23 in his individual capacity under this title.
24 (g) (1) Civil actions under this title brought by the
25 Secretary or by a participant, beneficiary, or fiduciary may

1 be brought in any court of competent jurisdiction, State or
2 Federal. In any action by a participant or beneficiary under
3 subsection (e) (2) or (3), such participant or beneficiary
4 shall maintain such action as a representative of all other
5 participants similarly situated as a class, if (A) the law
6 of the jurisdiction provides for class actions, and, (B) the
7 court is satisfied that the requirements for a class action
8 are not unduly burdensome as applied in the particular cir-
9 cumstances.

10 (2) Where such an action is brought in a district court
11 of the United States, it may be brought in the district where
12 the plan is administered, where the breach took place, or
13 where a defendant resides or may be found, and process may
14 be served in any other district where a defendant resides or
15 may be found.

16 (3) Notwithstanding any other law, the Secretary
17 shall have the right to remove an action from a State court
18 to a district court of the United States, if the action is one
19 seeking relief of a kind the Secretary is authorized to sue for
20 under this title. Any other party may remove an action under
21 this title from a State court to a district court of the United
22 States, subject to the requirements contained in section 1331
23 of title 28, United States Code. Any such removal shall be
24 prior to the trial of the action and shall be to a district court
25 where the Secretary could have initiated such an action.

1 (4) In all civil actions under this title, attorneys ap-
2 pointed by the Secretary may represent the Secretary ex-
3 cept as provided in section 518 (a) of title 28, United States
4 Code (relating to litigation before the Supreme Court of the
5 United States and the Court of Claims).

6 (h) The district courts of the United States shall have
7 jurisdiction, without respect to the amount in controversy, to
8 grant the relief provided for the subsections (e) (2) and (3)
9 of this section in any action brought by the Secretary. In any
10 action brought under subsection (e) by a participant, bene-
11 ficiary, or fiduciary, the jurisdiction of the district court shall
12 be subject to the requirements contained in section 1331 of
13 title 28, United States Code.

14 (i) (1) In any action by a participant or beneficiary,
15 the court in its discretion may allow a reasonable attorney's
16 fee and costs of action to either party.

17 (2) Except as to actions brought pursuant to subsec-
18 tion (e) (1) (B) of this section and actions brought by the
19 Secretary pursuant to subsections (e) (2) and (e) (3) of
20 this section, no action shall be brought except upon leave
21 of the court obtained upon vertified application and for good
22 cause shown, which application may be made ex parte.

23 (3) A copy of the complaint in any action under this
24 section by a participant or beneficiary shall be served upon

1 the Secretary by certified mail who shall have the right, in
2 his discretion, to intervene in the action.

3 ANNUAL REPORT OF SECRETARY

4 SEC. 504. The Secretary shall submit annually a report
5 to the Congress covering his administration of this title for
6 the preceding year, and including (1) an explanation of any
7 variances granted under section 501 as well as status report
8 on any plan currently operating with a variance and its
9 progress in achieving compliance with provisions of parts
10 2, 3, and 4, section 112 and section 105(b), and the pro-
11 jected date for terminating the variance; and (2) such in-
12 formation, data, research findings, and recommendations for
13 further legislation in connection with the matters covered by
14 this title as he may find advisable.

15 RULES AND REGULATIONS

16 SEC. 505. (a) The Secretary shall prescribe such rules
17 and regulations as he finds necessary or appropriate to carry
18 out the provisions of this title. Among other things, such rules
19 and regulations may define accounting, technical, and trade
20 terms used in such provisions; and may prescribe the form
21 and detail of all reports required to be made under section
22 112(i); and may provide for the keeping of books and
23 records, and for the inspection of such books and records.
24 The Secretary may not require that information required by

1 this title (or regulations thereunder) be submitted on forms
2 prescribed by the Secretary (except as otherwise provided
3 in section 112(i)). Nothing in this subsection authorizes
4 the Secretary to prescribe regulations respecting any matter
5 if any subsection (b) or any other provision of this subtitle
6 provides that regulations respecting such matter shall not be
7 effective unless approved by the Secretary of the Treasury.
8 (b) Regulations for purposes of part 2 or 3 of this
9 subtitle shall be effective for plan years beginning after
10 December 31, 1975, only if approved by the Secretary of
11 the Treasury.

12 OTHER AGENCIES AND DEPARTMENTS

13 SEC. 506. (a) In order to avoid unnecessary expense
14 and duplication of functions among Government agencies, the
15 Secretary may make such arrangements or agreements for co-
16 operation or mutual assistance in the performance of his func-
17 tions under this title, and the functions of any such agency
18 as he may find to be practicable and consistent with law.
19 The Secretary may utilize, on a reimbursable basis, the facili-
20 ties or services of any department, agency, or establishment
21 of the United States (including the Comptroller of the Cur-
22 rency) or of any State or political subdivision of a State,
23 including the services of any of its employees, with the lawful
24 consent of such department, agency, or establishment; and
25 each department, agency, or establishment of the United

1 States (including the Comptroller of the Currency) is au-
2 thorized and directed to cooperate with the Secretary and, to
3 the extent permitted by law, to provide such information and
4 facilities as he may request for his assistance in the perform-
5 ance of his functions under this title. The Attorney General
6 or his representative shall receive from the Secretary for
7 appropriate action such evidence developed in the perform-
8 ance of his functions under this title as may be found to
9 warrant consideration for criminal prosecution under the
10 provisions of this title or other Federal law.

11 (b) In order to utilize the facilities of the States, the
12 Secretary may, upon proper application of an appropriate
13 department or agency or any State, authorize such depart-
14 ment or agency to require the filing of annual reports as
15 described in section 104 of this Act for those plans exempted
16 under sections 105(a) (1) (A), (B), and (C) of this Act
17 from the filing requirements. In the case where such author-
18 ization is granted the authorized department or agency, with
19 respect to plans domiciled in the State (as determined under
20 rules of the Secretary), shall have the discretion to reject
21 such filing pursuant to the provisions of section 105(a) (2)
22 and to utilize the remedies set out in section 105(a) (3)
23 where appropriate. The Secretary may at his discretion ap-
24 point such State department or agency as his agent for the
25 purpose of maintaining civil actions under section 503(e)

1 with respect to such plans exempted from the filing require-
2 ments under section 105.

3 ADMINISTRATION

4 SEC. 507. (a) Subchapter B of chapter 5, and chapter 7,
5 of title 5, United States Code (relating to administrative pro-
6 cedure), shall be applicable to this title.

7 (b) No employee of the Department of Labor shall
8 administer or enforce this title with respect to any employee
9 organization of which he is a member or employer orga-
10 nization in which he has an interest.

11 APPROPRIATIONS

12 SEC. 508. There are hereby authorized to be appropri-
13 ated such sums, without fiscal limitation, as may be necessary
14 to enable the Secretary to carry out his functions and duties
15 under this title.

16 SEPARABILITY PROVISIONS

17 SEC. 509. If any provision of this Act, or the application
18 of such provision to any person or circumstances, shall be
19 held invalid, the remainder of this Act, or the application of
20 such provision to persons or circumstances other than those
21 as to which it is held invalid, shall not be affected thereby.

22 INTERFERENCE WITH RIGHTS PROTECTED UNDER ACT

23 SEC. 510. It shall be unlawful for any person to dis-
24 charge, fine, suspend, expel, discipline, or discriminate
25 against a participant or beneficiary for exercising any right

1 to which he is entitled under the provisions of the plan or
2 this title, or for the purpose of interfering with the attain-
3 ment of any right to which such participant may become en-
4 titled under the plan, or this title. The provisions of section
5 503 shall be applicable in the enforcement of this section.

6 COERCIVE INTERFERENCE

7 SEC. 511. It shall be unlawful for any person through
8 the use of fraud, force, or violence, or threat of the use of
9 force or violence, to restrain, coerce, intimidate, or attempt to
10 restrain, coerce, or intimidate any participant or beneficiary
11 for the purpose of interfering with or preventing the exercise
12 of any right to which he is or may become entitled under the
13 plan, or this title. Any person who willfully violates this sec-
14 tion shall be fined $10,000 or imprisoned for not more than
15 one year, or both.

16 REGISTRATION OF PLANS

17 SEC. 512. (a) Every administrator of a pension plan to
18 which part 2, 3, or 4 of this subtitle applies shall file with the
19 Secretary an application for registration of such plan. Such
20 application shall be in such form and shall be accompanied
21 by such documents as shall be prescribed by regulation of the
22 Secretary. After qualification under subsection (c), the ad-
23 ministrator of such plan shall comply with such requirements
24 as may be prescribed by the Secretary to maintain the plan's
25 qualification under this part.

1 (b) The filing required by subsection (a) for a plan
2 shall be made not later than 270 days after the beginning of
3 the earliest plan year to which either part 2 or 3 first applies
4 to such plan. In the case of a plan first required to file before
5 December 31, 1975, the Secretary may postpone until
6 not later than December 31, 1975, the first filing date for
7 such plan. Nothing in this subsection shall be construed to
8 prohibit any administrator from filing the application de-
9 scribed in subsection (a) at any earlier time.

10 (c) Upon the filing required by subsection (a), the
11 Secretary shall determine whether such plan is qualified for
12 registration under this section, and if the Secretary finds it
13 qualified, he shall issue a certificate of registration with
14 respect to such plan.

15 (d) If at any time the Secretary determines that a plan
16 required to qualify under this section is not qualified or is no
17 longer qualified for registration under this part, he shall notify
18 the administrator, setting forth the deficiency or deficiencies
19 in the plan or in its administration or operations which is the
20 basis for the notification given, and he shall further provide
21 the administrator, the employer of the employees covered
22 by the plan (if not the administrator), and the employee
23 organization representing such employees, if any, a reason-
24 able time within which to remove such deficiency or de-
25 ficiencies. If the Secretary thereafter determines that the

1 deficiency or deficiencies have been removed, he shall issue
2 or continue in effect the certificate, as the case may be. If
3 he determines on the record after opportunity for hearing
4 that the deficiency or deficiencies have not been removed,
5 he shall enter an order denying or canceling the certificate of
6 registration, and take such further action as may be ap-
7 propriate under the enforcement and other provisions of this
8 title.

9 (e) A pension plan shall be qualifed for registration
10 under this section if it conforms to, and is administered in
11 accordance with the provisions of this title which are appli-
12 cable to the plan.

13 (f) The Secretary may, by regulations, provide for the
14 filing of a single report satisfying the reporting and registra-
15 tion requirements of this title.

16 (g) Where a pension plan filed for registration under
17 this part is amended subsequent to such filing, the adminis-
18 trator shall (pursuant to regulations promulgated by the
19 Secretary) file with the Secretary a copy of the amendment
20 and such additional information and reports as the Secretary
21 by regulation may require, to determine that there is con-
22 tinued compliance under the provisions of this title which
23 are applicable to the plan.

24 ENFORCEMENT OF REGISTRATION

25 SEC. 513. Whenever the Secretary—

26 (1) determines, in the case of a pension plan re-

1 quired to be registered under section 512, that no appli-
2 cation for registration has been filed in accordance with
3 section 512, or
4 (2) issues an order under section 512 denying or
5 canceling the certificate of registration of a pension
6 plan, or
7 (3) determines, in the case of a pension plan sub-
8 ject to part 3, that there has been a failure to make
9 required contributions to the plan in accordance with
10 the provisions of this title or to pay required assess-
11 ments or to pay such other fees or moneys as may be
12 required under this title,
13 the Secretary may petition any district court of the United
14 States having jurisdiction of the parties, or the United States
15 District Court for the District of Columbia, for an order
16 requiring the employer or other person responsible for the
17 administration of such plan to comply with the require-
18 ments of this title as will qualify such plan for registration
19 or to take any action authorized, or required to be taken by
20 the administrator under section 303.
21 EFFECT ON OTHER LAWS
22 SEC. 514. (a) It is hereby declared to be the express
23 intent of Congress that, except for actions authorized by sec-
24 tion 503 (e) (1) (B)* of this Act and except as provided in
25 subsection (b) of this section the provisions of part 1
26 of this subtitle shall supersede any and all laws of the States

1 and of political subdivisions thereof insofar as they may now
2 or hereafter relate to the reporting and disclosure responsi-
3 bilities, and fiduciary responsibilities, of persons acting on
4 behalf of any employee benefit plan to which part 1 applies.
5 (b) Nothing in part 1 of this subtitle shall be con-
6 strued to exempt or relieve any person from any law of any
7 State which regulates insurance, banking, or securities or to
8 prohibit a State from requiring that there be filed with a
9 State agency copies of reports required by this title to be filed
10 with the Secretary. No employee benefit plan subject to the
11 provisions of this title (other than a plan established pri-
12 marily for the purpose of providing death benefits), nor
13 any trust established under such a plan, shall be deemed to
14 be an insurance company or other insurer, bank, trust com-
15 pany, or investment company or to be engaged in the busi-
16 ness of insurance or banking for purposes of any law of any
17 State purporting to regulate insurance companies, insurance
18 contracts, banks, trust companies, or investment companies.
19 (c) It is hereby declared to be the express intent of Con-
20 gress that the provisions of parts 2, 3, and 4 of this subtitle
21 shall supersede any and all laws of the States and of political
22 subdivisions thereof insofar as they may now or hereafter
23 relate to the nonforfeitability of participant's benefits in em-
24 ployee benefit plans described in section 201 (a) or 301 (a),

1 the funding requirements for such plans, the adequacy of
2 financing of such plans, portability requirements for such
3 plans, or the insurance of pension benefits under such plans.
4 (d) Nothing in this section shall be construed to pro-
5 hibit a delegation of authority by the Secretary to an appro-
6 priate State agency as permitted under section 506 of this
7 Act.
8 (e) Nothing in this title shall be construed to alter,
9 amend, modify, invalidate, impair, or supersede any law of
10 the United States (except as provided in 115(a)) or any
11 rule or regulation issued under any such law.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS

12 **SEC. 1001. AMENDMENT OF INTERNAL REVENUE CODE OF**
13 **1954.**
14 Except as otherwise expressly provided, whenever in
15 this title an amendment or repeal is expressed in terms
16 of an amendment to, or repeal of, a section or other provi-
17 sion, the reference shall be considered to be made to a
18 section or other provision of the Internal Revenue Code
19 of 1954.

Subtitle A—Participation, Vesting, Funding, Administration, Etc.

PART I—PARTICIPATION, VESTING, AND FUNDING

SEC. 1011. MINIMUM PARTICIPATION STANDARDS.

Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by adding at the end thereof the following:

"Subpart B—Special Rules

"Sec. 410. Minimum participation standards.
"Sec. 411. Minimum vesting standards.
"Sec. 412. Minimum funding standards.
"Sec. 413. Collectively bargained plans.
"Sec. 414. Definitions and special rules.
"Sec. 415. Limitations on benefits and contributions under qualified plans.

"SEC. 410. MINIMUM PARTICIPATION STANDARDS.

"(a) PARTICIPATION.—

"(1) MINIMUM AGE AND SERVICE CONDITIONS.—A trust shall not constitute a qualified trust under section 401 (a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond any of the following dates—

"(A) in the case of an employee who begins his period of service on or after the date he attains the age of 24, the date on which he completes 1 year of service; or

1 "(B) in the case of an employee who begins
2 his period of service before he attains the age of
3 24, the date on which he completes 3 years of service
4 or the date on which he attains 25 years of age,
5 whichever date is earlier.
6 In the case of any plan which provides that after 3 years
7 of service each participant has a right to 100 percent of
8 his accrued benefit under the plan which is nonforfeit-
9 able (within the meaning of section 411) at the time
10 such benefit accrues, this paragraph shall be applied
11 by substituting for subparagraphs (A) and (B) 'the
12 date on which he completes 3 years of service'.
13 "(2) MAXIMUM AGE CONDITIONS.—A trust shall
14 not constitute a qualified trust under section 401 (a) if
15 the plan of which it is a part excludes from participa-
16 tion (on the basis of age) employees who have attained
17 a specified age, unless the plan—
18 "(A) is a defined benefit plan, and
19 "(B) such employees begin employment with
20 the employer after they have attained a specified
21 age which is not more than 5 years before the
22 normal retirement age under the plan.
23 "(3) DEFINITION OF YEAR OF SERVICE.—
24 "(A) DETERMINATION UNDER REGULA-
25 TIONS.—For purposes of paragraph (1), the
26 term 'year of service' means a period of service

1 determined under regulations prescribed by the Sec-
2 retary or his delegate which provide for the calcula-
3 tion of such period on any reasonable and consistent
4 basis.

5 "(B) REASONABLE BASIS.—For purposes of
6 subparagraph (A), the calculation of any period of
7 service shall not be treated as made on a reasonable
8 basis—

9 "(i) if the average period of service re-
10 quired for participation in the plan (determined
11 as if one employee commenced his service on
12 each day) is more than 12 months, or

13 "(ii) if any employee who has completed
14 more than 17 months of continuous service is
15 excluded from participation in the plan by such
16 calculation.

17 "(C) ADDITIONAL REQUIREMENTS WITH RE-
18 SPECT TO SEASONAL EMPLOYMENT.—For purposes
19 of subparagraph (A), the calculation of any period
20 of service shall not be treated as made on a reason-
21 able basis in the case of a seasonal employee whose
22 customary employment is for at least 5 months in
23 a 12-month period, if his period of service is treated
24 as less than the period of service he would have had
25 if his customary employment had been nonseasonal.

26 "(D) SUBSTANTIALLY DIFFERENT WORK PE-

1 RIODS.—The regulations prescribed under this para-
2 graph shall take into account the customary working
3 period (as expressed in hours, days, weeks, months
4 or years) in any industry where, by the nature of the
5 employment, such period differs substantially from
6 the comparable work period in industry generally.
7 "(4) BREAKS IN SERVICE.—
8 "(A) SHORTER BREAKS IN SERVICE.—For pur-
9 poses of paragraph (3) (A), in the case of any em-
10 ployee who has a break in his service with the em-
11 ployer for a continuous period of not less than 1
12 year, the calculation of his period of service shall not
13 be treated as not made on a reasonable basis merely
14 because, under the plan, service performed by such
15 employee is not taken into account until he has
16 completed a continuous period of service (not in
17 excess of 1 year) after his return.
18 "(B) EMPLOYEES 50-PERCENT VESTED.—For
19 purposes of paragraph (3) (A), except as otherwise
20 provided in subparagraph (A), in the case of any
21 employee who has a break in his service with the
22 employer and who, before such break, had a nonfor-
23 feitable right to 50 percent or more of his accrued
24 benefit derived from employer contributions, the cal-
25 culation of his period of service shall not be treated

1 as made on a reasonable basis if service performed
2 by such employee before the end of such break in
3 service is not taken into account in calculating his
4 period of service.

5 "(C) 4 CONSECUTIVE YEARS OF SERVICE.—
6 For purposes of paragraph (3) (A), except as
7 otherwise provided in subparagraphs (A) and (D),
8 in the case of any employee who has a break in
9 his service with the employer the calculation of his
10 period of service shall not be treated as made on a
11 reasonable basis if such employee completed 4 con-
12 secutive years of service before such break and all
13 service before such break is not taken into account.

14 "(D) 6-YEAR BREAK IN SERVICE.—For pur-
15 poses of paragraph (3) (A), except as otherwise
16 provided in subparagraph (B), in the case of any
17 employee who has a break in his service with the
18 employer for a continuous period of not less than
19 6 years, the calculation of his period of service
20 shall not be treated as not made on a reasonable
21 basis merely because, under the plan, service per-
22 formed by such employee before the end of such
23 break in service is not taken into account.

24 "(b) ELIGIBILITY.—

25 "(1) IN GENERAL.—A trust shall not constitute a

1 qualified trust under section 401 (a) unless the trust, or
2 two or more trusts, or the trust or trusts and annuity plan
3 or plans are designated by the employer as constituting
4 parts of a plan intended to qualify under section 401 (a)
5 which benefits either—

6 "(A) 70 percent or more of all employees,
7 or 80 percent or more of all the employees who are
8 eligible to benefit under the plan if 70 percent or
9 more of all the employees are eligible to benefit
10 under the plan, excluding in each case employees
11 who have not satisfied the age and service require-
12 ments, if any, prescribed by the plan as a condition
13 of participation, or

14 "(B) such employees as qualify under a clas-
15 sification set up by the employer and found by the
16 Secretary or his delegate not to be discriminatory
17 in favor of employees who are officers, shareholders,
18 or highly compensated.

19 "(2) EXCLUSION OF CERTAIN EMPLOYEES.—For
20 purposes of paragraph (1), there shall be excluded from
21 consideration—

22 "(A) employees not included in the plan who
23 are included in a unit of employees covered by an
24 agreement which the Secretary or his delegate finds
25 to be a collective bargaining agreement between

1 employee representatives and one or more em-
2 ployers, if there is evidence that retirement benefits
3 were the subject of good faith bargaining between
4 such employee representatives and such employer or
5 employers,

6 "(B) in the case of a trust established or main-
7 tained pursuant to an agreement which the Secre-
8 tary or his delegate finds to be a collective-bargain-
9 ing agreement between air pilots represented in ac-
10 cordance with title II of the Railway Labor Act
11 and one or more employers, all employees not cov-
12 ered by such agreement, and

13 "(C) employees not included in the plan who
14 are nonresident aliens and who receive no earned
15 income (within the meaning of section 911(b))
16 from the employer which constitutes income from
17 sources within the United States (within the mean-
18 ing of section 861(a)(3)).

19 "(c) EXCLUSION OF GOVERNMENTAL PLANS AND
20 CERTAIN CHURCH PLANS.—This section shall not apply
21 to—

22 "(1) a governmental plan (within the meaning of
23 section 414(d)) which meets the requirements of sec-
24 tion 401(a)(3) as in effect on the day before the date
25 of the enactment of this section, and

1 "(2) a church plan (within the meaning of section
2 414(e))—
3 "(A) which meets the requirements of section
4 401(a)(3) (and, if applicable, section 406(b)(1)
5 or 407(b)(1)) as in effect on the day before the
6 date of the enactment of this section, and
7 "(B) with respect to which the election pro-
8 vided by subsection (d) has not been made.
9 "(d) ELECTION BY CHURCH TO HAVE PARTICIPA-
10 TION, VESTING, FUNDING, AND FORM OF BENEFIT PRO-
11 VISIONS APPLY.—
12 "(1) IN GENERAL.—If the church or convention or
13 association of churches which maintains any church
14 plan makes an election under this subsection (in such
15 form and manner, and with such official, as may be pre-
16 scribed by regulations), then the provisions of this title
17 relating to participation, vesting, funding, and form of
18 benefit (as in effect from time to time) shall apply to
19 such church plan as if such provisions did not contain
20 an exclusion for church plans.
21 "(2) ELECTION IRREVOCABLE.—An election under
22 this subsection with respect to any church plan shall be
23 binding with respect to such plan, and, once made, shall
24 be irrevocable."

1 SEC. 1012. MINIMUM VESTING STANDARDS.

2 (a) IN GENERAL.—Subpart B of part I of subchapter
3 D of chapter 1 is amended by adding after section 410 the
4 following new section:

5 "SEC. 411. MINIMUM VESTING STANDARDS.

6 "(a) GENERAL RULE.—Except as provided in subsec-
7 tions (d) and (e), a trust shall not constitute a qualified
8 trust under section 401(a) unless the plan of which such
9 trust is a part satisfies the requirements of paragraphs
10 (1) and (2) of this subsection and the requirements of
11 paragraph (2) of subsection (b), and in the case of a defined
12 benefit plan, also satisfies the requirements of paragraph (1)
13 of subsection (b).

14 "(1) EMPLOYEE CONTRIBUTIONS.—A plan satis-
15 fies the requirements of this paragraph if, under the plan,
16 an employee's rights in his accrued benefit derived from
17 his own contributions are nonforfeitable.

18 "(2) EMPLOYER CONTRIBUTIONS.—A plan satis-
19 fies the requirements of this paragraph if it satisfies the
20 requirements of subparagraph (A), (B), or (C).

21 "(A) 10-YEAR VESTING.—A plan satisfies the
22 requirements of this subparagraph if, under the
23 plan, an employee who has at least 10 years of
24 service has a nonforfeitable right to 100 percent of

his accrued benefit derived from employer contributions.

"(B) 5- TO 15-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if, under the plan, an employee who has at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions. The percentage shall not be less than the percentage determined under the following table:

"Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

"(C) RULE OF 45.—A plan satisfies the requirements of this subparagraph if, under the plan—

"(i) in the case of an employee who is an active participant, who has at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, the employee has a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions. and

"(ii) for each year of service after an em-

ployee first satisfies the requirements of clause (i), the nonforfeitable percentage of his accrued benefit so derived is not less than the percentage determined under the following table:

"Additional years of service:	Nonforfeitable percentage
1	60
2	70
3	80
4	90
5	100

"(D) TRANSITIONAL PERCENTAGES.—In the case of a plan in existence on December 31, 1973, for the first 5 plan years of the plan to which this section applies, in lieu of the nonforfeitable percentages set forth in subparagraph (A), (B), or (C), as the case may be, the nonforfeitable percentage shall be the following percentage of the applicable nonforfeitable percentage determined under such subparagraph:

"Plan year to which this section applies:	Percentage of applicable nonforfeitable percentage determined under subparagraph (A), (B), or (C)
1	50
2	60
3	70
4	80
5	90

"(E) NONFORFEITABLE.—For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan provides that it

1 is not payable where the participant dies (except
2 in the case of a survivor annuity which is payable
3 as provided in section 401 (a) (11)), or that pay-
4 ment of benefits is suspended during periods when
5 the participant has resumed employment with the
6 employer (or, in the case of a multiemployer plan,
7 has resumed employment in the industry), or that
8 plan amendments may be given retroactive applica-
9 tion as provided in section 412 (c) (8).

10 "(3) DETERMINATION OF NONFORFEITABLE PER-
11 CENTAGE.—In computing the period of service under
12 the plan for purposes of determining the nonforfeitable
13 percentage under paragraph (2), an employee's entire
14 service with the employer or employers maintaining
15 the plan shall be taken into account, except that the fol-
16 lowing may be disregarded:

17 "(A) service before age 25;

18 "(B) service during a period for which the
19 employee declined to contribute to a plan requiring
20 employee contributions;

21 "(C) service with an employer during any
22 period for which the employer did not maintain
23 the plan;

24 "(D) seasonal service not taken into account
25 for purposes of section 410;

1 "(E) service broken by periods of suspension
2 of employment, if the rules governing such breaks
3 in service are permissible under section 410(a)(4);
4 and
5 "(F) service before January 1, 1969, unless
6 the employee has had at least 5 years of service
7 after December 31, 1968.
8 "(4) YEAR OF SERVICE.—For purposes of this sub-
9 section, the term 'year of service' means a period of
10 service determined under regulations prescribed by the
11 Secretary or his delegate which provide for the calcula-
12 tion of such period on any reasonable and consistent
13 basis. The regulations prescribed under this paragraph
14 shall meet the requirements of paragraphs (3) and (4)
15 of section 410(a) and shall be consistent with the reg-
16 ulations prescribed for purposes of such paragraphs.
17 "(5) ACCRUED BENEFIT.—
18 "(A) IN GENERAL.—For purposes of this sec-
19 tion, the term 'accrued benefit' means—
20 "(i) in the case of a defined benefit plan,
21 the employee's accrued benefit determined un-
22 der the plan and, except as provided in sub-
23 section (c)(3), expressed in the form of an
24 annual benefit commencing at normal retire-
25 ment age, or

1 "(ii) in the case of a plan which is not a
2 defined benefit plan, the balance of the em-
3 ployee's account.
4 "(B) EFFECT OF CERTAIN DISTRIBUTIONS.—
5 Notwithstanding paragraph (3), for purposes of
6 determining the employee's accrued benefit under
7 the plan, the plan may disregard service performed
8 by the employee with respect to which he has re-
9 ceived (i) a distribution of the present value of his
10 entire nonforfeitable benefit if such distribution was
11 less than $1,750, or (ii) a distribution of the pres-
12 ent value of his nonforfeitable benefit attributable
13 to such service which he elected to receive. Clause
14 (i) of the first sentence of this subparagraph shall
15 apply only if such distribution was made on termi-
16 nation of the employee's participation in the plan.
17 Clause (ii) of the first sentence of this subpara-
18 graph shall apply only if such distribution was made
19 on termination of the employee's participation in
20 the plan or under such other circumstances as may
21 be provided under regulations prescribed by the
22 Secretary or his delegate.
23 "(6) NORMAL RETIREMENT AGE.—For purposes
24 of this section, the term 'normal retirement age' means
25 the earlier of—

1 "(A) the time a plan participant attains nor-
2 mal retirement age under the plan, or
3 "(B) the later of—
4 "(i) the time a plan participant attains age
5 65, or
6 "(ii) the 10th anniversary of the time a
7 plan participant commenced participation in
8 the plan.
9 "(7) SPECIFICATION OF VESTING SCHEDULE.—A
10 plan shall not satisfy the requirements of paragraph (2)
11 unless the plan specifies whether the vesting schedule
12 specified in subparagraph (A), (B), or (C) of para-
13 graph (2) shall be the applicable minimum schedule for
14 purposes of such plan.
15 "(8) CHANGES IN VESTING SCHEDULE.—A plan
16 amendment changing any vesting schedule under the plan
17 shall be treated as not satisfying the requirements of para-
18 graph (2) if the nonforfeitable percentage of the accrued
19 benefit derived from employer contributions (determined
20 for any year of service) of any employee who is a partici-
21 pant in the plan on the date such amendment is adopted,
22 or on the date such amendment becomes effective, is less
23 than such nonforfeitable percentage computed under the
24 plan without regard to such amendment.

1 "(b) ACCRUED BENEFIT REQUIREMENTS.—

2 "(1) GENERAL RULES.—

3 "(A) 3-PERCENT METHOD.—A defined benefit
4 plan satisfies the requirements of this paragraph
5 if the annual rate at which any participant accrues
6 retirement benefits under the plan for any year of
7 participation before the end of 33⅓ years of par-
8 ticipation is not less than 3 percent of the maximum
9 benefit to which such participant would be entitled
10 if he commenced participation at the earliest possible
11 entry age under the plan and served continuously
12 until the earlier of age 65 or the normal retirement
13 age specified under the plan. In the case of a plan
14 providing retirement benefits based on compensation
15 during any period, the maximum benefit to which a
16 participant would be entitled shall be determined as
17 if he continued to earn annually the average rate of
18 compensation which he earned during consecutive
19 years of service, not in excess of 10, for which his
20 compensation was the highest. For purposes of this
21 subparagraph, social security benefits and all other
22 relevant factors used to compute benefits shall be
23 treated as remaining constant as of the current year
24 for all years after such current year.

25 "(B) 133⅓ PERCENT RULE.—A defined benefit

1 plan satisfies the requirements of this paragraph un-
2 less under the plan the annual rate at which any
3 participant can accrue the retirement benefits pay-
4 able at normal retirement age under the plan for
5 any plan year is more than 133⅓ percent of the an-
6 nual rate at which he can accrue benefits for any
7 other plan year; except that an accrual rate for
8 any year before the 11th year of service which ex-
9 ceeds by more than 133⅓ percent the accrual rate
10 for any year after the 10th year of service may be
11 disregarded. For purposes of this subparagraph—
12 "(i) the accrual rate for any plan year
13 after the participant is eligible to retire with
14 benefits which are not actuarially reduced on
15 account of age or service shall not be taken
16 into account;
17 "(ii) any amendment to the plan which
18 is in effect for the current year shall be treated
19 as in effect for all other plan years;
20 "(iii) any change in an accrual rate which
21 does not apply to any participant in the current
22 year shall be disregarded;
23 "(iv) the fact that benefits under the plan
24 may be payable to certain employees before
25 normal retirement age shall be disregarded; and

1 "(v) social security benefits and all other
2 relevant factors used to compute benefits shall
3 be treated as remaining constant as of the cur-
4 rent year for all years after the current year.
5 "(C) CERTAIN INSURED DEFINED BENEFIT
6 PLANS.—Notwithstanding subparagraphs (A) and
7 (B), a defined benefit plan satisfies the requirements
8 of this paragraph if such plan—
9 "(i) is funded exclusively by the purchase
10 of individual insurance contracts, and
11 "(ii) satisfies the requirements of para-
12 graphs (2) and (3) of section 412(f) (relating
13 to certain insurance contract plans).
14 but only if an employee's accrued benefit as of any
15 applicable date is not less than the cash surrender
16 value his insurance contracts would have on such
17 applicable date if the requirements of paragraphs
18 (4), (5), and (6) of section 412(f) were
19 satisfied.
20 "(2) SEPARATE ACCOUNTING REQUIRED IN CER-
21 TAIN CASES.—A plan satisfies the requirements of this
22 paragraph if—
23 "(A) in the case of a defined benefit plan, the
24 plan requires separate accounting for the portion of
25 each employee's accrued benefit derived from any

1 voluntary employee contributions permitted under
2 the plan; and
3 "(B) in the case of any plan which is not a
4 defined benefit plan, the plan requires separate ac-
5 counting for each employee's accrued benefit.
6 "(3) YEAR OF SERVICE.—For purposes of deter-
7 mining an employee's accrued benefit, the term 'year of
8 service' means a period of service (beginning not later
9 than the date on which the employee first becomes a
10 participant in the plan) as determined under regulations
11 prescribed by the Secretary or his delegate which pro-
12 vide for the calculation of such period on any reasonable
13 and consistent basis.
14 "(c) ALLOCATION OF ACCRUED BENEFITS BETWEEN
15 EMPLOYER AND EMPLOYEE CONTRIBUTIONS.—
16 "(1) ACCRUED BENEFIT DERIVED FROM EM-
17 PLOYER CONTRIBUTIONS.—For purposes of this section,
18 an employee's accrued benefit derived from employer
19 contributions as of any applicable date is the excess of
20 the accrued benefit for such employee as of such appli-
21 cable date over the accrued benefit derived from con-
22 tributions made by such employee as of such date.
23 "(2) ACCRUED BENEFIT DERIVED FROM EM-
24 PLOYEE CONTRIBUTIONS.—
25 "(A) PLANS OTHER THAN DEFINED BENEFIT

1 PLANS.—In the case of a plan other than a defined
2 benefit plan, the accrued benefit derived from con-
3 tributions made by an employee as of any appli-
4 cable date is—
5 "(i) except as provided in clause (ii), the
6 balance of the employee's separate account con-
7 sisting only of his contributions and the income,
8 expenses, gains, and losses attributable thereto,
9 or
10 "(ii) if a separate account is not main-
11 tained with respect to an employee's contribu-
12 tions under such a plan, the amount which
13 bears the same ratio to his total accrued bene-
14 fit as the total amount of the employee's con-
15 tributions (less withdrawals) bears to the sum
16 of such contributions and the contributions made
17 on his behalf by the employer (less with-
18 drawals).
19 "(B) DEFINED BENEFIT PLANS.—
20 "(i) IN GENERAL.—In the case of a de-
21 fined benefit plan providing an annual benefit in
22 the form of a single life annuity (without an-
23 cillary benefits) commencing at normal retire-
24 ment age, the accrued benefit derived from
25 contributions made by an employee as of any

1 applicable date is the annual benefit equal to
2 the employee's accumulated contributions mul-
3 tiplied by the appropriate conversion factor.
4 "(ii) APPROPRIATE CONVERSION FAC-
5 TOR. For purposes of clause (i), the term
6 'appropriate conversion factor' means the factor
7 necessary to convert an amount equal to the ac-
8 cumulated contributions to a single life annuity
9 (without ancillary benefits) commencing at
10 normal retirement age and shall be 10 percent
11 for a normal retirement age of 65 years. For
12 other normal retirement ages the conversion
13 factor shall be determined in accordance with
14 regulations prescribed by the Secretary or his
15 delegate.
16 "(C) DEFINITION OF ACCUMULATED CONTRI-
17 BUTIONS.—For purposes of this subsection, the term
18 'accumulated contributions' means the total of—
19 "(i) all mandatory contributions made by
20 the employee,
21 "(ii) interest (if any) under the plan to
22 the end of the last plan year to which subsec-
23 tion (a) (2) does not apply (by reason of the
24 applicable effective date), and
25 "(iii) interest on the sum of the amounts

1 determined under clauses (i) and (ii) com-
2 pounded annually at the rate of 5 percent per
3 annum from the beginning of the first plan year
4 to which subsection (a) (2) applies (by reason
5 of the applicable effective date) to the date upon
6 which the employee would attain normal retire-
7 ment age.

8 For purposes of this subparagraph, the term 'man-
9 datory contributions' means amounts contributed to
10 the plan by the employee which are required as a
11 condition of employment, as a condition of participa-
12 tion in such plan, or as a condition of obtaining
13 benefits under the plan attributable to employer
14 contributions.

15 "(D) ADJUSTMENTS.—The Secretary or his
16 delegate is authorized to adjust by regulation the
17 conversion factor described in subparagraph (B),
18 the rate of interest described in clause (iii) of sub-
19 paragraph (C), or both, from time to time as he
20 may deem necessary. The rate of interest shall bear
21 the relationship to 5 percent which the Secretary
22 or his delegate determines to be comparable to the
23 relationship which the long-term money rates and
24 investment yields for the last period of 10 calendar
25 years ending at least 12 months before the beginning

1 of the plan year bear to the long-term money rates
2 and investment yields for the 10-calendar year pe-
3 riod 1964 through 1973. No such adjustment shall
4 be effective for a plan year beginning before the
5 expiration of 1 year after such adjustment is deter-
6 mined and published.

7 "(E) LIMITATION.—The accrued benefit de-
8 rived from employee contributions shall not exceed
9 the employee's accrued benefit under the plan.

10 "(3) ACTUARIAL ADJUSTMENT.—For purposes of
11 this section, in the case of any defined benefit plan, if
12 an employee's accrued benefit is to be determined as
13 an amount other than an annual benefit commencing at
14 normal retirement age, or if the accrued benefit derived
15 from contributions made by an employee is to be deter-
16 mined with respect to a benefit other than an annual
17 benefit in the form of a single life annuity (without an-
18 cillary benefits) commencing at normal retirement age,
19 the employee's accrued benefit, or the accrued benefits
20 derived from contributions made by an employee, as the
21 case may be, shall be the actuarial equivalent of such
22 benefit or amount determined under paragraph (1) or
23 (2).

24 "(d) SPECIAL RULES.—

25 "(1) COORDINATION WITH SECTION 401(a)

1 (4).—A plan which satisfies the requirements of this
2 section shall be treated as satisfying any vesting re-
3 quirements resulting from the application of section
4 401 (a) (4) unless—
5 "(A) there has been a pattern of abuse under
6 the plan (such as a firing of employees before their
7 accrued benefits vest), or
8 "(B) there have been, or there is reason to
9 believe there will be, an accrual of benefits or for-
10 feitures tending to discriminate in favor of em-
11 ployees who are officers, shareholders, or highly
12 compensated.
13 "(2) PROHIBITED DISCRIMINATION.—Subsection
14 (a) shall not apply to benefits which may not be pro-
15 vided for designated employees in the event of early
16 termination of the plan under provisions of the plan
17 adopted pursuant to regulations prescribed by the Sec-
18 retary or his delegate to preclude the discrimination
19 prohibited by section 401 (a) (4).
20 "(3) TERMINATION OR PARTIAL TERMINATION;
21 DISCONTINUANCE OF CONTRIBUTIONS.—Notwithstand-
22 ing the provisions of subsection (a), a trust shall not
23 constitute a qualified trust under section 401 (a) unless
24 the plan of which such trust is a part provides that—

1 "(A) upon its termination or partial termina-
2 tion, or
3 "(B) in the case of a plan to which section
4 412 does not apply, upon complete discontinuance
5 of contributions under the plan,
6 the rights of all affected employees to benefits accrued
7 to the date of such termination, partial termination, or
8 discontinuance, to the extent funded as of such date, or
9 the amounts credited to the employees' accounts, are non-
10 forfeitable. This paragraph shall not apply to benefits
11 or contributions which, under provisions of the plan
12 adopted pursuant to regulations prescribed by the Secre-
13 tary or his delegate to preclude the discrimination pro-
14 hibited by section 401 (a) (4), may not be used for
15 designated employees in the event of early termination
16 of the plan.
17 "(4) CLASS YEAR PLANS.—The requirements of
18 subsection (a) (2) shall be deemed to be satisfied in the
19 case of a class year plan if such plan provides that 100
20 percent of each employee's right to or derived from the
21 contributions of the employer on his behalf with respect
22 to any plan year are nonforfeitable not later than the
23 end of the 5th plan year following the plan year
24 for which such contributions were made (within the
25 meaning of section 404 (a) (6)). For purposes of this

1 section, the term 'class year plan' means a profit-sharing
2 or stock bonus plan which provides for the separate non-
3 forfeitability of employees' rights to or derived from the
4 contributions for each plan year.

5 "(5) TREATMENT OF VOLUNTARY EMPLOYEE CON-
6 TRIBUTIONS.—In the case of a defined benefit plan
7 which permits voluntary employee contributions, the
8 portion of an employee's accrued benefit derived from
9 such contributions shall be treated as an accrued bene-
10 fit derived from employee contributions under a plan
11 other than a defined benefit plan.

12 "(e) EXCLUSION OF CERTAIN PLANS.—This section
13 shall not apply to—

14 "(1) a governmental plan, if the plan meets any
15 vesting requirements resulting from the application of
16 section 401 (a) (4) as in effect on the day before the
17 date of the enactment of this section,

18 "(2) a church plan—

19 "(A) which meets any vesting requirements
20 resulting from the application of section 401 (a) (4)
21 as in effect on the day before the date of the enact-
22 ment of this section, and

23 "(B) with respect to which the election pro-
24 vided by section 410 (d) has not been made, and

25 "(3) a plan which has not, at any time after the

1 date of the enactment of this section, provided for em-
2 ployer contributions.
3 "(f) RECORDKEEPING REQUIREMENTS.—
4 "(1) SINGLE EMPLOYER PLAN.—Except as pro-
5 vided by paragraph (2), every employer shall, in ac-
6 cordance with regulations prescribed by the Secretary or
7 his delegate, maintain records with respect to each of his
8 employees sufficient to determine the benefits due or
9 which may become due to such employees.
10 "(2) MORE THAN ONE EMPLOYER.—If more than
11 one employer adopts a plan, each such employer shall, in
12 accordance with regulations prescribed by the Secretary
13 or his delegate, furnish to the plan administrator the in-
14 formation necessary for the administrator to maintain
15 the records required by paragraph (1). Such adminis-
16 trator shall maintain the records required by paragraph
17 (1).
18 "(g) CROSS REFERENCE.—

"For penalty for failure to furnish the information or maintain the records required under this section, see section 6690."

19 (b) PENALTY FOR FAILURE TO FURNISH INFORMA-
20 TION.—Subchapter B of chapter 68 (relating to assessable
21 penalties) is amended by adding at the end thereof the
22 following new section:

1 "SEC. 6690. FAILURE TO FURNISH INFORMATION OR
2 MAINTAIN RECORDS.
3 "(a) CIVIL PENALTY.—If any person who is required,
4 under section 411 (f), to furnish information or maintain
5 records for any plan year fails to comply with such require-
6 ment, he shall pay a penalty of $10 for each employee with
7 respect to whom such failure occurs, unless it is shown that
8 such failure is due to reasonable cause.
9 "(b) DEFICIENCY PROCEDURES NOT TO APPLY.—
10 Subchapter B of chapter 63 (relating to deficiency proce-
11 dures for income, estate, gift, and certain excise taxes) shall
12 not apply to the assessment or collection of any penalty
13 imposed by subsection (a)."
14 (c) COMPARABILITY OF PLANS.—Section 401 (a) (re-
15 lating to requirements for qualification) is amended by adding
16 at the end of paragraph (5) the following: "For purposes
17 of determining whether two or more plans of an employer
18 satisfy the requirements of paragraph (4) when considered
19 as a single plan, if the amount of contributions on behalf of
20 the employees allowed as a deduction under section 404 for
21 the taxable year with respect to such plans, taken together,
22 bears a uniform relationship to the total compensation, or the
23 basic or regular rate of compensation, of such employees, the
24 plans shall not be considered discriminatory merely because
25 the rights of employees to, or derived from, the employer

1 contributions under the separate plans do not become nonfor-
2 feitable at the same rate. For purposes of determining
3 whether two or more plans of an employer satisfy the require-
4 ments of paragraph (4) when considered as a single plan, if
5 the employees' rights to benefits under the separate plans do
6 not become nonforfeitable at the same rate, but the levels of
7 benefits provided by the separate plans satisfy the require-
8 ments of regulations prescribed by the Secretary or his dele-
9 gate to take account of the differences in such rates, the plans
10 shall not be considered discriminatory merely because of the
11 differences in such rates."

12 **SEC. 1013. MINIMUM FUNDING STANDARDS.**

13 (a) IN GENERAL.—Subpart B of part I of subchapter
14 D of chapter 1 is amended by adding after section 411 the
15 following new section:

16 **"SEC. 412. MINIMUM FUNDING STANDARDS.**

17 "(a) GENERAL RULE.—Except as provided in sub-
18 section (e), this section applies to a plan if, for any plan year
19 beginning on or after the effective date of this section for
20 such plan—

21 "(1) such plan included a trust which qualified (or
22 was determined by the Secretary or his delegate to have
23 qualified) under section 401 (a), or

24 "(2) such plan satisfied (or was determined by the

1 Secretary or his delegate to have satisfied) the require-
2 ments of section 404(a)(2) or 405(a).
3 A plan to which this section applies shall have satisfied
4 the minimum funding standard for such plan for a plan year
5 at the end of which the plan does not have an accumulated
6 funding deficiency. For purposes of this section and section
7 4971, the term 'accumulated funding deficiency' means for
8 any plan the excess of the total charges to the funding stand-
9 ard account for all plan years (beginning with the first plan
10 year to which this section applies) over the total credits to
11 such account for such years.
12 "(b) FUNDING STANDARD ACCOUNT.—
13 "(1) ACCOUNT REQUIRED.—Each plan to which
14 this section applies shall establish and maintain a fund-
15 ing standard account. Such account shall be credited and
16 charged solely as provided in this section.
17 "(2) CHARGES TO ACCOUNT.—For a plan year,
18 the funding standard account shall be charged with the
19 sum of—
20 "(A) the normal cost of the plan for the plan
21 year,
22 "(B) the amounts necessary to amortize in
23 equal annual installments (until fully amortized)—
24 "(i) in the case of a plan in existence on
25 January 1, 1974, the unfunded past service

1 liability under the plan on the first day of
2 the first plan year to which this section applies,
3 over a period of 40 plan years,
4 "(ii) in the case of a plan which comes
5 into existence after January 1, 1974, the un-
6 funded past service liability under the plan on
7 the first day of the first plan year to which
8 this section applies, over a period of 30 plan
9 years (40 plan years in the case of multi-
10 employer plan),
11 "(iii) separately, with respect to each
12 plan year, the net increase (if any) in unfunded
13 past service liability under the plan arising
14 from plan amendments adopted in such year,
15 over a period of 30 plan years (40 plan years
16 in the case of a multiemployer plan), and
17 "(iv) separately, with respect to each plan
18 year, the net experience loss (if any) under the
19 plan, over a period of 15 plan years (20 plan
20 years in the case of a multiemployer plan),
21 "(C) the excess (if any) for such plan year
22 of—
23 "(i) the annual amount which would be
24 necessary to amortize in equal annual install-
25 ments from such year over a period of 20 years

1 the excess (if any) of the present value of all
2 nonforfeitable benefits (computed using appro-
3 priate mortality and interest assumptions) over
4 the value of the plan's assets, over
5 "(ii) the excess (if any) of the sum of
6 the amounts computed under subparagraphs
7 (A) and (B) of paragraph (2) over the
8 amount computed under paragraph (3) (B),
9 and
10 "(D) the amount necessary to amortize each
11 waived funding deficiency (within the meaning of
12 subsection (d) (3)) for each prior plan year in
13 equal annual installments (until fully amortized)
14 over a period of 15 plan years.
15 "(3) CREDITS TO ACCOUNT.—For a plan year, the
16 funding standard account shall be credited with the
17 sum of—
18 "(A) the amount considered contributed by
19 the employer to or under the plan (within the
20 meaning of section 404 (a) (6)) for the plan year,
21 "(B) the amount necessary to amortize in
22 equal annual installments (until fully amortized)—
23 "(i) separately, with respect to each plan
24 year, the net decrease (if any) in unfunded
25 past service liability under the plan arising from

1 plan amendments adopted in such year, over
2 a period of 30 plan years (40 plan years in
3 the case of a multiemployer plan), and
4 "(ii) separately, with respect to each plan
5 year, the net experience gain (if any) under
6 the plan, over a period of 15 plan years (20
7 plan years in the case of a multiemployer plan),
8 and
9 "(C) the amount of the waived funding defi-
10 ciency (within the meaning of subsection (d) (3))
11 for the plan year.
12 "(4) COMBINING AND OFFSETTING AMOUNTS TO
13 BE AMORTIZED.—Under regulations prescribed by the
14 Secretary or his delegate, amounts required to be amor-
15 tized under paragraph (2) or paragraph (3), as the
16 case may be—
17 "(A) may be combined into one amount under
18 such paragraph to be amortized over a period de-
19 termined on the basis of the remaining amortiza-
20 tion period for all items entering into such com-
21 bined amount, and
22 "(B) may be offset against amounts required
23 to be amortized under the other such paragraph,
24 with the resulting amount to be amortized over a
25 period determined on the basis of the remaining

1 amortization periods for all items entering into
2 whichever of the two amounts being offset is the
3 greater.
4 "(5) INTEREST.—The funding standard account
5 (and items therein) shall be charged or credited (as
6 determined under regulations prescribed by the Secre-
7 tary or his delegate) with interest at the appropriate rate
8 consistent with the rate or rates of interest used under
9 the plan to determine costs.
10 "(c) SPECIAL RULES.—
11 "(1) DETERMINATIONS TO BE MADE UNDER FUND-
12 ING METHOD.—For purposes of this section, normal
13 costs, accrued liability, past service liabilities, and ex-
14 perience gains and losses shall be determined under the
15 funding method used to determine costs under the plan.
16 "(2) VALUATION OF ASSETS.—
17 "(A) IN GENERAL.—For purposes of this sec-
18 tion, the value of the plan's assets shall be deter-
19 mined on the basis of any reasonable actuarial
20 method of valuation which takes into account fair
21 market value and which is permitted under regula-
22 tions prescribed by the Secretary or his delegate.
23 "(B) ELECTION WITH RESPECT TO BONDS.—
24 The value of a bond or other evidence of indebted-
25 ness which is not in default as to principal or interest

1 may, at the election of the plan administrator, be
2 determined on an amortized basis running from ini-
3 tial cost at purchase to par value at maturity or earli-
4 est call date. Any election under this subparagraph
5 shall be made at such time and in such manner as
6 the Secretary or his delegate shall by regulations
7 provide, shall apply to all such evidences of in-
8 debtedness, and may be revoked only with the
9 consent of the Secretary or his delegate.

10 "(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
11 SONABLE.—For purposes of this section, all costs, liabili-
12 ties, rates of interest, and other factors under the plan
13 shall be determined on the basis of actuarial assump-
14 tions which, in the aggregate, are reasonable.

15 "(4) TREATMENT OF CERTAIN CHANGES AS EX-
16 PERIENCE GAIN OR LOSS.—For purposes of this sec-
17 tion, if—

18 "(A) a change in benefits under the Social
19 Security Act or in other retirement benefits created
20 under Federal or State law, or

21 "(B) a change in the definition of the term
22 'wages' under section 3121, or a change in the
23 amount of such wages taken into account under
24 regulations prescribed for purposes of section 401
25 (a) (5),

1 results in an increase or decrease in accrued liability
2 under a plan, such increase or decrease shall be treated
3 as an experience loss or gain.

4 "(5) CHANGE IN FUNDING METHOD OR IN PLAN
5 YEAR REQUIRES APPROVAL.—If the funding method
6 for a plan is changed, the new funding method shall
7 become the funding method used to determine costs and
8 liabilities under the plan only if the change is approved
9 by the Secretary or his delegate. If the plan year for a
10 plan is changed, the new plan year shall become the
11 plan year for the plan only if the change is approved by
12 the Secretary or his delegate.

13 "(6) FULL FUNDING.—If, as of the close of a
14 plan year, a plan would (but for the application of this
15 paragraph) have an accumulated funding deficiency in
16 excess of the full funding limitation—

17 "(A) the funding standard account shall be
18 credited with the amount of such excess, and

19 "(B) all amounts described in paragraphs (2)
20 (B) and (D) and (3) (B) of subsection (b)
21 which are required to be amortized shall be con-
22 sidered fully amortized for purposes of such para-
23 graphs.

24 "(7) FULL FUNDING LIMITATION.—For purposes
25 of paragraph (6), the term 'full funding limitation'
26 means the excess (if any) of—

1 "(A) the accrued liability (including normal
2 cost) under the plan (determined under the entry
3 age normal funding method if such accrued liability
4 cannot be directly calculated under the funding
5 method used for the plan), over
6 "(B) the lesser of the fair market value of the
7 plan's assets or the value of such assets determined
8 under paragraph (2).
9 "(8) CERTAIN RETROACTIVE PLAN AMEND-
10 MENTS.—
11 "(A) AMENDMENTS WITHOUT APPROVAL OF
12 SECRETARY OF LABOR.—For purposes of this sec-
13 tion, any amendment applying to a plan year
14 which—
15 "(i) is adopted after the close of such plan
16 year but no later than the time prescribed by
17 law (including extensions) for filing the return
18 of the employer for the taxable year with which
19 or within which the plan year ends (or, in the
20 case of a multiemployer plan, no later than 2
21 years after the close of such plan year), and
22 "(ii) does not reduce the accrued benefit
23 of any participant determined as of the begin-
24 ning of the first plan year to which the amend-
25 ment applies

1 shall, at the election of the plan administrator, be
2 deemed to have been made on the first day of such
3 plan year.
4 "(B) AMENDMENTS WITH APPROVAL OF SEC-
5 RETARY OF LABOR.—For purposes of this section,
6 any amendment adopted after the close of the plan
7 year which reduces benefits, whether or not other-
8 wise nonforfeitable (determined as of the end of the
9 preceding plan year) shall, except for purposes of
10 section 4971 (a) (relating to initial 5 percent tax
11 on failure to meet minimum funding standards), be
12 deemed to have been made on the first day of the
13 first plan year to which such amendment applies if
14 the Secretary of Labor approves such retroactive
15 application of such amendment. The Secretary of
16 Labor shall approve such application on his own
17 motion (or having received the petition of the plan
18 administrator) after giving interested persons an
19 opportunity to be heard and after determining that—
20 "(i) such amendment affects the plan only
21 to such extent (and for such limited period of
22 time) as is necessary or appropriate to carry
23 out the purposes of the Employee Benefit Se-
24 curity Act of 1974 and to provide adequate
25 protection to the participants and beneficiaries
26 in the plan,

1 "(ii) but for such amendment, there
2 would result a substantial risk to the volun-
3 tary continuation of the plan or a substan-
4 tial curtailment of pension benefit levels or the
5 levels of employee compensation, and
6 "(iii) failure to make such amendment
7 would be adverse to the interests of plan par-
8 ticipants in the aggregate.
9 No retroactive amendment may be approved under
10 this subparagraph unless the Secretary of Labor is
11 satisfied that all plan participants and other inter-
12 ested persons (as determined under regulations pre-
13 scribed by the Secretary of Labor) have received
14 adequate prior notice from the plan administrator of
15 any hearing to be held under this subparagraph. The
16 Secretary of Labor shall notify the Secretary of the
17 Treasury of any such hearing.
18 "(9) 3-YEAR VALUATION.—For purposes of this
19 section, a determination of experience gains and losses
20 and a valuation of the plan's liability shall be made not
21 less frequently than once every 3 years, except that such
22 determination shall be made more frequently to the
23 extent required in particular cases under regulations pre-
24 scribed by the Secretary or his delegate.

1 "(d) VARIANCE FROM MINIMUM FUNDING STAND-
2 ARD; EXTENSION OF AMORTIZATION PERIODS FOR MULTI-
3 EMPLOYER PLANS.—
4 "(1) WAIVER IN CASE OF SUBSTANTIAL BUSINESS
5 HARDSHIP.—If an employer is unable to satisfy the mini-
6 mum funding standard for a plan year without substan-
7 tial business hardship and if application of the standard
8 would be adverse to the interests of plan participants in
9 the aggregate, the Secretary or his delegate may waive
10 the requirements of subsection (a) for such year with
11 respect to all or any portion of the minimum funding
12 standard other than the portion thereof determined under
13 subsection (b) (2) (D). The Secretary or his delegate
14 shall not waive the minimum funding standard with
15 respect to a plan for more than 5 of any 15 consecutive
16 plan years.
17 "(2) DETERMINATION OF SUBSTANTIAL BUSINESS
18 HARDSHIP.—For purposes of this section, the factors
19 taken into account in determining substantial business
20 hardship shall include (but shall not be limited to)
21 whether or not—
22 "(A) the employer is operating at an eco-
23 nomic loss,

1 "(B) there is substantial unemployment or un-
2 deremployment in the trade or business and in the
3 industry concerned,
4 "(C) the sales and profits of the industry con-
5 cerned are depressed or declining, and
6 "(D) it is reasonable to expect that the plan
7 will be continued only if the waiver is granted.
8 "(3) WAIVED FUNDING DEFICIENCY.—For pur-
9 poses of this section, the term 'waived funding deficiency'
10 means the portion of the minimum funding standard (de-
11 termined without regard to subsection (b) (3) (C)) for
12 a plan year waived by the Secretary or his delegate and
13 not satisfied by employer contributions.
14 "(4) EXTENSION OF AMORTIZATION PERIODS FOR
15 MULTIEMPLOYER PLANS.—If 10 percent or more of
16 the number of employers contributing to or under a
17 multiemployer plan demonstrate to the satisfaction of
18 the Secretary of Labor that they would experience sub-
19 stantial business hardship if required to amortize in equal
20 annual installments any unfunded liability (described
21 in any clause of subsection (b) (2) (B)) of such plan
22 over a period of years and if such requirement would be
23 adverse to the interests of plan participants in the aggre-
24 gate, then the period of years described in such clause
25 shall be extended for such plan for the period of time

1 (not in excess of 10 years) which is certified for this
2 purpose by the Secretary of Labor to the Secretary of
3 the Treasury.

4 "(5) BENEFITS MAY NOT BE INCREASED DURING
5 WAIVER OR EXTENSION PERIOD.—No amendment of
6 the plan which increases the liabilities of the plan by
7 reason of any increase in benefits, any change in the
8 accrual of benefits, or any change in the rate at which
9 benefits become nonforfeitable under the plan shall be
10 adopted if a waiver under paragraph (1), an exten-
11 sion of time under paragraph (4), or an alternate meth-
12 od prescribed under section 1015(b) of the Employee
13 Benefit Security Act of 1974 is in effect with respect to
14 the plan. If a plan is amended in violation of the preced-
15 ing sentence, any such waiver, extension of time, or
16 alternate method shall not apply to any plan year ending
17 on or after the day on which such amendment is adopted.

18 "(e) EXCEPTIONS.—Subsection (a) shall not apply
19 to—

20 "(1) any profit-sharing or stock bonus plan,

21 "(2) any insurance contract plan described in sub-
22 section (f),

23 "(3) any governmental plan which meets the re-
24 quirements of section 401(a)(7) as in effect on the
25 day before the date of the enactment of this section,

1 "(4) any church plan—

2 "(A) which meets the requirements of section

3 401 (a) (7) as in effect on the day before the date

4 of the enactment of this section, and

5 "(B) with respect to which the election pro-

6 vided by section 410 (d) has not been made, and

7 "(5) a plan which has not, at any time after the

8 date of the enactment of this section, provided for em-

9 ployer contributions.

10 "(f) CERTAIN INSURANCE CONTRACT PLANS.—A

11 plan is described in this subsection if—

12 "(1) the plan is funded exclusively by the pur-

13 chase of individual insurance contracts,

14 "(2) such contracts provide for level annual pre-

15 mium payments to be paid extending not later than the

16 retirement age for each individual participating in the

17 plan, and commencing with the date the individual be-

18 came a participant in the plan (or, in the case of an

19 increase in benefits, commencing at the time such in-

20 crease becomes effective),

21 "(3) benefits provided by the plan are equal to

22 the benefits provided under each contract at normal

23 retirement age under the plan and are guaranteed by

24 an insurance carrier (licensed under the laws of a State

1 to do business with the plan) to the extent premiums
2 have been paid,
3 "(4) premiums payable for the plan year, and all
4 prior plan years under such contracts have been paid
5 before lapse or there is reinstatement of the policy,
6 "(5) no rights under such contracts have been
7 subject to a security interest at any time during the plan
8 year, and
9 "(6) no policy loans are outstanding at any time
10 during the plan year."
11 (b) EXCISE TAX ON FAILURE TO MEET MINIMUM
12 FUNDING STANDARDS.—Subtitle D (relating to miscel-
13 laneous excise taxes) is amended by adding at the end there-
14 of the following new chapter:

15 **"CHAPTER 43—QUALIFIED PENSION, ETC.,**
16 **PLANS**

"Sec. 4971. Taxes on failure to meet minimum funding standards.

17 **"SEC. 4971. TAXES ON FAILURE TO MEET MINIMUM FUND-**
18 **ING STANDARDS.**

19 "(a) INITIAL TAX.—For each taxable year of an em-
20 ployer who maintains a plan to which section 412 applies,
21 there is hereby imposed a tax of 5 percent on the amount of
22 the accumulated funding deficiency under the plan, deter-
23 mined as of the end of the plan year ending with or within
24 such taxable year. The tax imposed by this subsection shall

1 be paid by the employer responsible for contributing to or
2 under the plan the amount described in section 412 (b)
3 (3) (A).

4 "(b) ADDITIONAL TAX.—In any case in which an ini-
5 tial tax is imposed by subsection (a) on an accumulated fund-
6 ing deficiency and such accumulated funding deficiency is
7 not corrected within the correction period, there is hereby
8 imposed a tax equal to 100 percent of such accumulated
9 funding deficiency to the extent not corrected. The tax im-
10 posed by this subsection shall be paid by the employer de-
11 scribed in subsection (a).

12 "(c) DEFINITIONS.—For purposes of this section—

13 "(1) ACCUMULATED FUNDING DEFICIENCY.—
14 The term 'accumulated funding deficiency' has the
15 meaning given to such term by the last sentence of
16 section 412 (a).

17 "(2) CORRECT.—The term 'correct' means, with
18 respect to an accumulated funding deficiency, the con-
19 tribution, to or under the plan, of the amount necessary
20 to reduce such accumulated funding deficiency as of the
21 end of a plan year in which such deficiency arose to
22 zero.

23 "(3) CORRECTION PERIOD.—The term 'correction
24 period' means, with respect to an accumulated funding
25 deficiency, the period beginning with the end of a plan

1 year in which there is an accumulated funding deficiency
2 and ending 90 days after the date of mailing of a notice
3 of deficiency under section 6212 with respect to the tax
4 imposed by subsection (a), extended—
5 "(A) by any period in which a deficiency can-
6 not be assessed under section 6213 (a), and
7 "(B) by any other period which the Secretary
8 or his delegate determines is reasonable and neces-
9 sary to permit a reduction of the accumulated fund-
10 ing deficiency to zero under this section.
11 "(d) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section, see section 275."

12 (c) AMENDMENTS TO SECTION 404.—
13 (1) Paragraph (1) of section 404 (a) (relating
14 to deduction for employer contributions to pension
15 trusts) is amended to read as follows:
16 "(1) PENSION TRUSTS.—In the taxable year when
17 paid, if the contributions are paid into a pension trust,
18 and if such taxable year ends within or with a taxable
19 year of the trust for which the trust is exempt under
20 section 501 (a), in an amount determined as follows:
21 "(A) the amount necessary to satisfy the
22 minimum funding standard provided by section
23 412 (a) for plan years ending within or with such
24 taxable year (or for any prior plan year), if such

1 amount is greater than the amount determined under
2 subparagraph (B) or (C) (whichever is appli-
3 cable with respect to the plan),
4 "(B) the amount necessary to provide with
5 respect to all of the employees under the trust the
6 remaining unfunded cost of their past and current
7 service credits distributed as a level amount, or a
8 level percentage of compensation, over the remain-
9 ing future service of each such employee, as deter-
10 mined under regulations prescribed by the Secretary
11 or his delegate, but if such remaining unfunded cost
12 with respect to any 3 individuals is more than 50
13 percent of such remaining unfunded cost, the amount
14 of such unfunded cost attributable to such individuals
15 shall be distributed over a period of at least 5 tax-
16 able years, or
17 "(C) an amount equal to the normal cost of
18 the plan, as determined under regulations prescribed
19 by the Secretary or his delegate, plus, if past service
20 or other supplementary pension or annuity credits
21 are provided by the plan, an amount necessary to
22 amortize such credits in equal annual payments
23 (until fully amortized) over 10 years, as determined
24 under regulations prescribed by the Secretary or
25 his delegate.

1 In determining the amount deductible in such year under
2 the foregoing limitations, the funding method and the
3 actuarial assumptions shall be those used for such year
4 under section 412, and the maximum amount deductible
5 for such year under the foregoing limitations
6 shall be an amount equal to the full funding limita-
7 tion for such year determined under section 412. Any
8 amount paid in a taxable year in excess of the amount
9 deductible in such year under the foregoing limitations
10 shall be deductible in the succeeding taxable years in
11 order of time to the extent of the difference between the
12 amount paid and deductible in each such succeeding year
13 and the maximum amount deductible for such year
14 under the foregoing limitations."

15 (2) Paragraph (6) of section 404 (a) (relating to
16 taxpayers on accrual basis) is amended to read as
17 follows:

18 "(6) TIME WHEN CONTRIBUTIONS DEEMED
19 MADE.—For purposes of paragraphs (1), (2), and (3),
20 a taxpayer shall be deemed to have made a payment on
21 the last day of the preceding taxable year if the payment
22 is on account of such taxable year and is made not later
23 than the time prescribed by law for filing the return for
24 such taxable year (including extensions thereof)."

25 (3) Paragraph (7) of section 404 (a) (relating
26 to limit on deductions) is amended to read as follows:

1 "(7) LIMIT ON DEDUCTIONS.—If amounts are de-
2 ductible under paragraphs (1) and (3), or (2) and
3 (3), or (1), (2), and (3), in connection with two or
4 more trusts, or one or more trusts and an annuity plan,
5 the total amount deductible in a taxable year under such
6 trusts and plans shall not exceed the greater of 25 per-
7 cent of the compensation otherwise paid or accrued
8 during the taxable year to the beneficiaries of the trusts
9 or plans, or the amount of contributions made to or under
10 the trusts or plans to the extent such contributions do
11 not exceed the amount of employer contributions neces-
12 sary to satisfy the minimum funding standard provided
13 by section 412 for the plan year which ends with or
14 within such taxable year (or for any prior plan year).
15 In addition, any amount paid into such trust or under
16 such annuity plans in any taxable year in excess of the
17 amount allowable with respect to such year under the
18 preceding provisions of this paragraph shall be deductible
19 in the succeeding taxable years in order of time, but the
20 amount so deductible under this sentence in any one such
21 succeeding taxable year together with the amount allow-
22 able under the first sentence of this paragraph shall not
23 exceed 25 percent of the compensation otherwise paid
24 or accrued during such taxable years to the beneficiaries
25 under the trusts or plans. This paragraph shall not have
26 the effect of reducing the amount otherwise deductible

1 under paragraphs (1), (2), and (3), if no employee is
2 a beneficiary under more than one trust or a trust and
3 an annuity plan."

4 SEC. 1014. COLLECTIVELY BARGAINED PLANS.

5 Subpart B of part I of subchapter D of chapter 1 (re-
6 lating to special rules) is amended by inserting after section
7 412 the following new section:

8 "SEC. 413. COLLECTIVELY BARGAINED PLANS.

9 "(a) APPLICATION OF SECTION.—This section ap-
10 plies to—

11 "(1) a plan maintained pursuant to an agreement
12 which the Secretary or his delegate finds to be a collec-
13 tive-bargaining agreement between employee represent-
14 atives and one or more employers, and

15 "(2) each trust which is a part of such plan.

16 "(b) GENERAL RULE.—If this section applies to a
17 plan, notwithstanding any other provision of this title—

18 "(1) PARTICIPATION.—Section 410 shall be ap-
19 plied as if all employees of each of the employers who are
20 parties to the collective-bargaining agreement and who
21 are subject to the same benefit computation formula
22 under the plan were employed by a single employer.

23 "(2) DISCRIMINATION, ETC.—Sections 401(a)
24 (4) and 411(d)(3) shall be applied as if all participants
25 who are employed by employers who are required to

1 contribute to or under the plan on the same basis were
2 employed by a single employer.
3 "(3) EXCLUSIVE BENEFIT. For purposes of sec-
4 tion 401 (a), in determining whether the plan of an em-
5 ployer is for the exclusive benefit of his employees and
6 their beneficiaries, all plan participants shall be con-
7 sidered to be his employees.
8 "(4) VESTING.—Section 411 (other than subsec-
9 tion (d) (3)) shall be applied as if all employers who
10 have been parties to the collective-bargaining agreement
11 constituted a single employer, except that the application
12 of any rules with respect to breaks in services shall be
13 made under regulations prescribed by the Secretary or
14 his delegate.
15 "(5) PLAN YEAR.—The minimum funding standard
16 provided by section 412 shall be determined as if all
17 participants in the plan were employed by a single
18 employer. For purposes of section 412 (other than for
19 purposes of determining the portion of a liability re-
20 quired to be amortized for a plan year), a plan year
21 shall be considered (A) to begin on the date the collec-
22 tive-bargaining agreement is first effective (treating an
23 agreement to extend a prior agreement as a new agree-
24 ment) and to end on the expiration date of the agree-
25 ment determined under such agreement, or (B) to be

1 such other period as may be determined under regula-
2 tions prescribed by the Secretary or his delegate.
3 "(6) LIABILITY FOR FUNDING TAX.—For a plan
4 year the liability under section 4971 of each employer
5 who is a party to the collective bargaining agreement
6 shall be determined, in accordance with regulations pre-
7 scribed by the Secretary or his delegate—
8 "(A) first on the basis of their respective de-
9 linquencies in meeting required employer contribu-
10 tions under the plan, and
11 "(B) then on the basis of their respective
12 liabilities for contributions under the plan.
13 "(7) DEDUCTION LIMITATIONS.—Each applicable
14 limitation provided by section 404(a) shall be deter-
15 mined for a plan year (within the meaning of paragraph
16 (5)) as if all participants in the plan were employed
17 by a single employer. The amounts contributed to or
18 under the plan by each employer who is a party to the
19 agreement, for the portion of his taxable year which is
20 included within such a plan year, shall be considered
21 not to exceed such a limitation if the anticipated em-
22 ployer contributions for such plan year (determined in
23 a manner consistent with the manner in which actual
24 employer contributions for such plan year are deter-
25 mined) do not exceed such limitation. If such antici-

1 pated contributions exceed such a limitation, the portion
2 of each such employer's contributions which is not
3 deductible under section 404 shall be determined in
4 accordance with regulations prescribed by the Secretary
5 or his delegate."

6 **SEC. 1015. DEFINITIONS AND SPECIAL RULES.**

7 (a) IN GENERAL.—Subpart B of part I of subchapter
8 D of chapter 1 is amended by inserting after section 413
9 the following new section:

10 **"SEC. 414. DEFINITIONS AND SPECIAL RULES.**

11 "(a) SERVICE FOR PREDECESSOR EMPLOYER.—For
12 purposes of this part, service for a predecessor of the em-
13 ployer shall, to the extent provided in regulations prescribed
14 by the Secretary or his delegate, be treated as service for
15 the employer.

16 "(b) EMPLOYEES OF CONTROLLED GROUP OF CORPO-
17 RATIONS.—For purposes of sections 401, 410, 411, and 415,
18 all employees of all corporations which are members of a
19 controlled group of corporations (within the meaning of sec-
20 tion 1563(a), determined without regard to section 1563
21 (a)(4) and (e)(3)(C)) shall be treated as employed by
22 a single employer. With respect to a plan adopted by more
23 than one such corporation, the minimum funding standard
24 of section 412, the tax imposed by section 4971, and the
25 applicable limitations provided by section 404(a) shall be

1 determined as if all such employers were a single employer,
2 and allocated to each employer in accordance with regula-
3 tions prescribed by the Secretary or his delegate.

4 "(c) EMPLOYEES OF PARTNERSHIPS, PROPRIETOR-
5 SHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—
6 For purposes of sections 401, 410, 411, and 415, under
7 regulations prescribed by the Secretary or his delegate, all
8 employees of trades or businesses (whether or not incorpo-
9 rated) which are under common control shall be treated as
10 employed by a single employer. The regulations prescribed
11 under this subsection shall be based on principles similar
12 to the principles which apply in the case of subsection (b).

13 "(d) GOVERNMENTAL PLAN.—For purposes of this
14 part, the term 'governmental plan' means a plan established
15 and maintained for its employees by the Government of the
16 United States, by the government of any State or political
17 subdivision thereof, or by any agency or instrumentality of
18 any of the foregoing. The term 'governmental plan' also in-
19 cludes any plan to which the Railroad Retirement Act of
20 1935 or 1937 applies.

21 "(e) CHURCH PLAN.—

22 "(1) IN GENERAL.—Except as provided in para-
23 graph (2), for purposes of this part the term 'church
24 plan' means a plan established and maintained by a

1 church or by a convention or association of churches
2 which is exempt from tax under section 501.
3 "(2) CERTAIN UNRELATED BUSINESS OR MULTI-
4 EMPLOYER PLANS.—The term 'church plan' does not
5 include a plan—
6 "(A) which is established and maintained pri-
7 marily for the benefit of employees (or their bene-
8 ficiaries) of such church or convention or association
9 of churches who are employed in connection with
10 one or more unrelated trades or businesses (within
11 the meaning of section 513), or
12 "(B) which is a multiemployer plan, if one or
13 more of the employers in the plan is not a church
14 (or a convention or association of churches) which
15 is exempt from tax under section 501.
16 "(3) CERTAIN CHURCH AGENCIES NOW UNDER
17 CHURCH PLAN.—For purposes of this subsection, if—
18 "(A) a plan described in paragraph (1) was in
19 existence on January 1, 1974, and
20 "(B) such plan on such date covered employees
21 of any organization which is (i) exempt from tax
22 under section 501 and (ii) an agency of the church
23 or convention or association of churches which estab-
24 lished and maintained the plan,

1 then the employees of such agency who are at any time
2 covered by such plan shall be treated as employees whose
3 employer is such church or convention or association of
4 churches, as the case may be.
5 "(f) MULTIEMPLOYER PLAN.—
6 "(1) IN GENERAL.—For purposes of this part, the
7 term 'multiemployer plan' means a plan—
8 "(A) to which more than one employer is
9 required to contribute,
10 "(B) which is maintained pursuant to a col-
11 lective bargaining agreement between employee
12 representatives and more than one employer,
13 "(C) under which the amount of contribu-
14 tions made under the plan for a plan year by each
15 employer making such contributions is less than
16 50 percent of the aggregate amount of contribu-
17 tions made under the plan for that plan year by
18 all employers making such contributions, and
19 "(D) which satisfies such other requirements
20 as the Secretary or his delegate may by regulations
21 prescribe.
22 "(2) SPECIAL RULES.—For purposes of this sub-
23 section—
24 "(A) If a plan is a multiemployer plan within
25 the meaning of paragraph (1) for any plan year,

1 subparagraph (C) of paragraph (1) shall be
2 applied by substituting '75 percent' for '50 percent'
3 for each subsequent plan year until the first plan
4 year following a plan year in which the plan had
5 one employer who made contributions of 75 percent
6 or more of the aggregate amount of contributions
7 made under the plan for that plan year by all em-
8 ployers making such contributions.
9 "(B) All corporations which are members of
10 a controlled group of corporations (within the mean-
11 ing of section 1563 (a), determined without regard
12 to section 1563 (e) (3) (C)) shall be deemed to be
13 one employer.
14 "(g) PLAN ADMINISTRATOR.—For purposes of this
15 part, the term 'plan administrator' means—
16 "(1) the person specifically so designated by the
17 terms of the instrument under which the plan is op-
18 erated;
19 "(2) in the absence of a designation referred to in
20 paragraph (1)—
21 "(A) in the case of a plan maintained by a
22 single employer, such employer,
23 "(B) in the case of a plan maintained by two
24 or more employers or jointly by one or more em-
25 ployers and one or more employee organizations,

1 the association, committee, joint board of trustees,
2 or other similar group of representatives of the
3 parties who maintained the plan, or
4 "(C) in any case to which subparagraph (A)
5 or (B) does not apply, such other person as the
6 Secretary or his delegate may prescribe.
7 "(h) TAX TREATMENT OF CERTAIN CONTRIBU-
8 TIONS.—
9 "(1) IN GENERAL.—For purposes of this title, any
10 amount contributed—
11 "(A) to an employees' trust described in sec-
12 tion 401 (a), or
13 "(B) under a plan described in section 403 (a)
14 or 405 (a),
15 shall not be treated as having been made by the em-
16 ployer if it is designated as an employee contribution.
17 "(2) DESIGNATION BY UNITS OF GOVERNMENT.—
18 For purposes of paragraph (1), in the case of any
19 plan established by the government of any State or
20 political subdivision thereof, or by any agency or in-
21 strumentality of any of the foregoing, where the con-
22 tributions of employing units are designated as employee
23 contributions but where any employing unit picks up
24 the contributions, the contributions so picked up shall be
25 treated as employer contributions.

1 "(i) DEFINED CONTRIBUTION PLAN.—For purposes of
2 this part, the term 'defined contribution plan' means a plan
3 which provides for an individual account for each participant
4 and for benefits based solely on the amount contributed to
5 the participant's account, and any income, expenses, gains
6 and losses, and any forfeitures of accounts of other partici-
7 pants which may be allocated to such participant's account.
8 "(j) DEFINED BENEFIT PLAN.—For purposes of this
9 part, the term 'defined benefit plan' means any plan which
10 is not a defined contribution plan.
11 "(k) REGULATIONS UNDER THIS SUBPART TO BE
12 APPROVED BY SECERTARY OF LABOR.—Any regulation pre-
13 scribed by the Secretary or his delegate for purposes of this
14 subpart, other than a regulation relating to the application
15 of section 401 (a) (4) or 415 or to subsection (h) of this
16 section, shall be effective for any plan year beginning after
17 December 31, 1975, only if approved by the Secretary of
18 Labor."
19 (b) VARIATIONS FROM CERTAIN VESTING AND
20 FUNDING REQUIREMENTS FOR MULTIEMPLOYER PLANS.—
21 In the case of any multiemployer plan (within the meaning
22 of section 414 (f) of the Internal Revenue Code of 1954),
23 the Secretary of Labor on his own motion or after having
24 received the petition of a plan administrator may, after giving
25 interested persons an opportunity to be heard, prescribe an

1 alternate method which will satisfy the requirements of sub-
2 section (a) (2) of section 411 of the Internal Revenue Code
3 of 1954, subsection (b) (1) of such section 411, paragraphs
4 (2) and (3) of section 412 (b) of such Code, or section
5 412 (c) (5) of such Code for such limited period of time as
6 is necessary or appropriate to carry out the purposes of this
7 Act and which will provide adequate protection to the par-
8 ticipants and beneficiaries in the plan, whenever he finds
9 that the application of such requirements would—

10 (1) increase the costs of the parties to the plan to
11 such an extent that there would result a substantial risk
12 to the voluntary continuation of the plan or a substantial
13 curtailment of benefit levels or the levels of employees'
14 compensation, or

15 (2) impose unreasonable administrative burdens
16 with respect to the operation of the plan, having due
17 regard to the particular characteristics of the plan or the
18 type of plan involved,

19 and where the application of such requirements or discontinu-
20 ance of the plan would be adverse to the interests of plan
21 participants in the aggregate. No alternate method may be
22 prescribed under this subsection unless the Secretary of Labor
23 is satisfied that all plan participants and other interested per-
24 sons (as determined under regulations prescribed by the
25 Secretary of Labor) have received adequate prior notice

1 from the plan administrator of any hearing to be held under
2 this subsection. The Secretary of Labor shall notify the Secre-
3 tary of the Treasury of any such hearing.

4 SEC. 1016. CONFORMING AND CLERICAL AMENDMENTS.

5 (a) CONFORMING AMENDMENTS.—

6 (1) Section 275(a) (relating to denial of deduc-
7 tion for certain taxes) is amended by adding at the end
8 thereof the following new paragraph:

9 "(6) Taxes imposed by chapter 42 and chapter
10 43."

11 (2) Section 401(a) (relating to requirements for
12 qualification) is amended—

13 (A) by striking out paragraph (3) and insert-
14 ing in lieu thereof:

15 "(3) if the plan of which such trust is a part satis-
16 fies the requirements of section 410 (relating to mini-
17 mum participation standards); and",

18 (B) by striking out "paragraph (3)(B) or
19 (4)" in paragraph (5) and inserting in lieu thereof
20 "paragraph (4) or section 410(b) (without regard
21 to paragraph (1)(A) thereof)", and

22 (C) by striking out paragraph (7) and insert-
23 ing in lieu thereof:

24 "(7) A trust shall not constitute a qualified trust
25 under this section unless the plan of which such trust is

1 a part satisfies the requirements of section 411 (relating
2 to minimum vesting standards)."
3 (3) Section 404(a)(2) (relating to deduction for
4 contributions of an employer to employee's annuity
5 plan) is amended by striking out "and (8)," and inserting
6 in lieu thereof "(8), (11), (12), (13), (14),
7 (15)".
8 (4) Section 406(b)(1) (relating to certain em-
9 ployees of foreign subsidiaries) is amended by striking
10 out "paragraphs (3)(B) and (4) of section 401(a)"
11 and inserting in lieu thereof "section 401(a)(4) and
12 section 410(b) (without regard to paragraph (1)(A)
13 thereof)".
14 (5) Section 407(b)(1) (relating to certain em-
15 ployees of domestic subsidiaries engaged in business out-
16 side the United States) is amended by striking out
17 "paragraphs (3)(B) and (4) of section 401(a)" and
18 inserting in lieu thereof "section 401(a)(4) and section
19 410(b) (without regard to paragraph (1)(A)
20 thereof)".
21 (6) Section 805(d)(1)(C) (relating to defini-
22 tion of pension plan reserves) is amended by striking
23 out "and (8)" and inserting in lieu thereof "(8),
24 (11), (12), (13), (14), and (15)".
25 (7) Section 6161(b)(1) (relating to extensions

of time for paying tax) is amended by striking out "or 42" and inserting in lieu thereof "42 or 43". The second sentence of section 6161 (b) is amended by striking out "or 42" and inserting in lieu thereof ", 42, or chapter 43".

(8) Section 6201 (d) (relating to assessment authority) is amended by striking out "and chapter 42" and inserting in lieu thereof ", chapter 42, and chapter 43".

(9) Section 6211 (defining deficiency) is amended—

(A) by striking out so much of subsection (a) as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"(a) IN GENERAL.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 42 and 43, the term 'deficiency' means the amount by which the tax imposed by subtitle A or B, or chapter 42 or 43, exceeds the excess of—"; and

(B) by striking out "chapter 42" in subsection (b) (2) and inserting in lieu thereof "chapter 42 or 43".

(10) Section 6212 (relating to notice of deficiency) is amended—

(A) by striking out "chapter 42" in subsection (a) and inserting in lieu thereof "chapter 42 or 43",

(B) by striking out "or chapter 42" in subsection (b) (1) and inserting in lieu thereof "chapter 42, or chapter 43",

(C) by striking out "chapter 42, and this chapter" in subsection (b) (1) and inserting in lieu thereof "chapter 42, chapter 43, and this chapter", and

(D) by striking out "of the same decedent," in subsection (c) and inserting in lieu thereof "of the same decedent, of chapter 43 tax for the same taxable years,".

(11) Section 6213 (relating to restrictions applicable to deficiencies and petition to Tax Court) is amended—

(A) by striking out "or chapter 42" in subsection (a) and inserting in lieu thereof ", chapter 42 or 43",

(B) by striking out the heading of subsection (e) and inserting in lieu thereof:

"(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXCISE TAXES.—",

(C) by striking out "or 4945 (relating to

1 taxes on taxable expenditures)" in subsection (e)
2 and inserting in lieu thereof "4945 (relating to
3 taxes on taxable expenditures), 4971 (relating to
4 excise taxes on failure to meet minimum funding
5 standard)"; and
6 (D) by striking out "or 4945 (h) (2)" in sub-
7 section (e) and inserting in lieu thereof ", 4945
8 (i) (2), or 4971 (c) (3),".
9 (12) Section 6214 (relating to determinations by
10 Tax Court) is amended—
11 (A) by amending the heading of subsection
12 (c) to read as follows:
13 "(c) TAXES IMPOSED BY SECTION 507 OR CHAPTER
14 42 or 43.—",
15 (B) by inserting after "chapter 42" each place
16 it appears in subsection (c) "or 43"; and
17 (C) by striking out "chapter 42" in subsec-
18 tion (d) and inserting in lieu thereof "chapter 42
19 or 43".
20 (13) Section 6344 (a) (1) (relating to cross refer-
21 ences) is amended by striking out "chapter 42" and
22 inserting in lieu thereof "chapter 42 or 43".
23 (14) Section 6501 (e) (3) (relating to limitations
24 on assessment and collection) is amended by striking

1 out "chapter 42" and inserting in lieu thereof "chapter
2 42 or 43".
3 (15) Section 6503 (relating to suspension of run-
4 ning of period of limitations) is amended—
5 (A) by striking out "chapter 42 taxes)" in
6 subsection (a)(1) and inserting in lieu thereof
7 "certain excise taxes)", and
8 (B) by inserting after "section 507" in sub-
9 section (h) "or section 4971", and by striking out
10 "or 4945(h)(2)" in subsection (h) and insert-
11 ing in lieu thereof "4945(i)(2), or 4971(c)(3)".
12 (16) Section 6512 (relating to limitations in case
13 of petition to Tax Court) is amended by striking out
14 "chapter 42" each place it appears therein and inserting
15 in lieu thereof "chapter 42 or 43".
16 (17) Section 6601(d) (relating to interest on
17 underpayment, nonpayment, or extensions of time for
18 payment of tax) is amended by—
19 (A) striking out in the heading thereof "CHAP-
20 TER 42" and inserting in lieu thereof "CHAPTER 42
21 OR 43", and
22 (B) striking out "chapter 42" and inserting
23 in lieu thereof "certain excise".
24 (18) Section 6653(c)(1) (relating to income,
25 estate, gift, and chapter 42 taxes) is amended by strik-

ing out "chapter 42" each place it appears therein (including the heading) and inserting in lieu thereof "certain excise".

(19) Section 6659 (b) (relating to applicable rules) is amended by striking out "chapter 42" and inserting in lieu thereof "certain excise".

(20) Section 6676 (b) (relating to failure to supply identifying numbers) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(21) Section 6677 (b) (relating to failure to file information returns with respect to certain foreign trusts) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(22) Section 6679 (b) (relating to failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(23) Section 6682 (b) (relating to false information with respect to withholding allowances based on itemized deductions) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(24) The heading of section 6861 (relating to

1 jeopardy assessments of income, estate, and gift taxes)
2 is amended by striking out "AND GIFT TAXES.", and
3 inserting in lieu thereof ", GIFT, AND CERTAIN EXCISE
4 TAXES."
5 (25) Section 6862 (relating to jeopardy assess-
6 ment of taxes other than income, estate, and gift taxes)
7 is amended—
8 (A) by striking out "AND GIFT TAXES.", in
9 the heading and inserting in lieu thereof ", GIFT,
10 AND CERTAIN EXCISE TAXES.",
11 (B) by striking out "and gift tax)" in sub-
12 section (a) and inserting in lieu thereof "gift tax,
13 and certain excise taxes)".
14 (26) Section 7422 (relating to civil actions for
15 refund) is amended—
16 (A) by striking out "chapter 42" and insert-
17 ing in lieu thereof "chapter 42 or 43" in subsec-
18 tion (e),
19 (B) by striking out "CHAPTER 42" in the
20 heading of subsection (g) and inserting in lieu
21 thereof "CHAPTER 42 OR 43",
22 (C) by striking out "or 4945" in subsection
23 (g) (1) and inserting in lieu thereof "4945 or
24 4971",
25 (D) by striking out "section 4945 (a) (relat-

1 ing to initial taxes on taxable expenditures)" in sub-
2 section (g) (1) and inserting in lieu thereof "sec-
3 tion 4945 (a) (relating to initial taxes on taxable
4 expenditures), 4971 (a) (relating to initial tax on
5 failure to meet minimum funding standard)",
6 (E) by striking out "or section 4945 (b) (re-
7 lating to additional taxes on taxable expenditures)"
8 in subsection (g) (1) and inserting in lieu thereof
9 "section 4945 (b) (relating to additional taxes on
10 taxable expenditures), or section 4971 (b) (relat-
11 ing to additional tax on failure to meet minimum
12 funding standard)", and
13 (F) by striking out "or 4945" in paragraphs
14 (2) and (3) of subsection (g) and inserting in lieu
15 thereof "4945, or 4971".
16 (27) Section 6204 (b) (relating to supplemental
17 assessments) is amended by striking out "and gift taxes"
18 and inserting in lieu thereof "gift, and certain excise
19 taxes".
20 (b) CLERICAL AMENDMENTS.—
21 (1) Part I of subchapter D of chapter 1 is amended
22 by inserting after the heading and before the table of
23 sections the following:

"Subpart A. General rule.
"Subpart B. Special rules.

1 **"Subpart A—General Rule".**

2 (2) The table of chapters for subtitle D is amended
3 by adding at the end thereof the following new item:

"CHAPTER 43. Qualified pension, etc., plans."

4 (3) The table of sections for subchapter B of chap-
5 ter 68 is amended—

6 (A) by striking out the item relating to the
7 section captioned "Assessable penalties with respect
8 to information required to be furnished under sec-
9 tion 7654" and inserting in lieu thereof:

"Sec. 6688. Assessable penalties with respect to information required to be furnished under section 7654.",

10 (B) by inserting at the end thereof the follow-
11 ing new item:

"Sec. 6690. Failure to furnish information or maintain records."

12 (4) Subchapter B of chapter 68 is amended by
13 striking out the heading of the section immediately pre-
14 ceding section 6689 and inserting in lieu thereof:

15 **"SEC. 6688. ASSESSABLE PENALTIES WITH RESPECT TO**
16 **INFORMATION REQUIRED TO BE FUR-**
17 **NISHED UNDER SECTION 7654."**

18 (5) The table of sections for part II of subchapter
19 A of chapter 70 is amended by striking out "and gift
20 taxes" in the items relating to sections 6861 and 6862
21 and inserting in lieu thereof "gift, and certain excise taxes".

1 SEC. 1017. EFFECTIVE DATES.

2 (a) GENERAL RULE.—Except as otherwise provided in
3 this section, the amendments made by this part shall apply
4 in the case of plan years beginning after the date of the
5 enactment of this Act.

6 (b) EXISTING PLANS.—

7 (1) IN GENERAL.—Except as otherwise provided
8 in subsections (c) and (d), in the case of a plan in
9 existence on January 1, 1974, the amendments made
10 by this part shall apply in the case of plan years begin-
11 ning after December 31, 1975. In any case described
12 in paragraph (2) or (3) of this subsection, such para-
13 graphs shall apply if (and only if) their application re-
14 sults in a later effective date for the amendments made
15 by this part.

16 (2) COLLECTIVE-BARGAINING AGREEMENTS.—In
17 the case of a plan maintained on January 1, 1974,
18 pursuant to one or more agreements which the Secre-
19 tary of the Treasury or his delegate finds to be collective-
20 bargaining agreements between employee representatives
21 and one or more employers, paragraph (1) shall be
22 applied by substituting for December 31, 1975, the
23 earlier of—

24 (A) the date on which the last of such agree-
25 ments relating to the plan terminates (determined

1 without regard to any extension thereof agreed to
2 after the date of the enactment of this Act), or
3 (B) December 31, 1980, but in no event
4 shall a date earlier than December 31, 1976, be
5 substituted.
6 (3) LABOR ORGANIZATION CONVENTIONS.—In
7 the case of a plan maintained by a labor organization
8 which is exempt from tax under section 501 (c) (5)
9 of the Internal Revenue Code of 1954 exclusively for
10 the benefit of its employees and their beneficiaries, para-
11 graph (1) shall be applied by substituting for December
12 31, 1975, the earlier of—
13 (A) the date on which the second convention
14 of such labor organization held after the date of the
15 enactment of this Act ends, or
16 (B) December 31, 1980, but in no event
17 shall a date earlier than December 31, 1976, be
18 substituted.
19 (c) EXISTING PLANS MAY ELECT NEW PROVI-
20 SIONS.—In the case of a plan in existence on January 1,
21 1974, the provisions of the Internal Revenue Code of 1954
22 relating to participation, vesting, funding, and form of benefit
23 (as in effect from time to time) shall apply in the case of the
24 plan year (which begins after the date of the enactment of
25 this Act but before the applicable date determined under sub-

1 section (b)) selected by the plan administrator and to all
2 subsequent plan years, if the plan administrator elects (in
3 such manner and at such time as the Secretary of the Treas-
4 ury or his delegate shall by regulations prescribe) to have
5 such provisions so apply. Any election made under this
6 subsection, once made, shall be irrevocable.

7 (d) CERTAIN DEFINITIONS.—Section 414 of the In-
8 ternal Revenue Code of 1954 (other than subsections (b)
9 and (c) of such section 414), as added by section 1015(a)
10 of this Act, shall take effect on the date of the enactment
11 of this Act.

12 **PART II—CERTAIN OTHER PROVISIONS RELAT-**
13 **ING TO QUALIFIED RETIREMENT PLANS**

14 **SEC. 1021. ADDITIONAL PLAN REQUIREMENTS.**

15 (a) JOINT AND SURVIVOR ANNUITY REQUIREMENT.—

16 (1) IN GENERAL.—Section 401(a) (relating
17 to requirements for qualification) is amended by in-
18 serting after paragraph (10) the following new para-
19 graph:

20 "(11) (A) A trust shall not constitute a qualified
21 trust under this section if the plan of which such trust
22 is a part provides for the payment of benefits in the
23 form of an annuity and if—

24 "(i) the participant and his spouse have been

1 married throughout the 5-year period ending on
2 the annuity starting date, or
3 "(ii) the participant dies after his earliest re-
4 tirement age and before the annuity starting date,
5 and the participant and his spouse have been mar-
6 ried throughout the 5-year period ending on the
7 date of his death,
8 unless such plan provides for the payment of annuity
9 benefits in a form having the effect of a qualified joint
10 and survivor annuity.
11 "(B) A plan shall be treated as satisfying the re-
12 quirements of this paragraph if, under the plan, each
13 participant has a reasonable period (as prescribed by
14 the Secretary or his delegate by regulations) before the
15 annuity starting date during which he may elect in writ-
16 ing (after having received a written explanation of the
17 terms and conditions of the joint and survivor annuity
18 and the effect of an election under this subparagraph)
19 not to take such joint and survivor annuity.
20 "(C) A plan shall not be treated as not satisfying
21 the requirements of this paragraph merely because, under
22 the plan, any election under subparagraph (B), and any
23 revocation of any such election, does not become effective
24 (or ceases to be effective) if the participant dies within
25 a period (not in excess of 2 years) beginning on the
26 date of such election or revocation, as the case may be.

1 "(D) For purposes of this paragraph—

2 "(i) the term 'annuity starting date' means

3 the first day of the first period for which an amount

4 is received as an annuity (whether by reason of

5 retirement or by reason of disability),

6 "(ii) the term 'earliest retirement age' means

7 the earliest date on which, under the plan, the

8 participant could elect to receive retirement bene-

9 fits, and

10 "(iii) the term 'qualified joint and survivor

11 annuity' means an annuity for the life of the partic-

12 ipant with a survivor annuity for the life of his

13 spouse which is not contingent upon survivorship

14 of such spouse beyond the earliest age at which the

15 participant could elect to receive retirement benefits

16 under the plan and which is not less than one-half

17 of the amount of the annuity payable during the

18 joint lives of the participant and his spouse.

19 "(E) This paragraph shall apply only if—

20 "(i) the annuity starting date did not occur

21 before the effective date of this paragraph, and

22 "(ii) the participant was an active participant

23 in the plan on or after such effective date."

24 (2) CERTAIN ADDITIONAL REQUIREMENTS APPLY

25 ONLY TO PLANS TO WHICH VESTING REQUIREMENTS

1 APPLY.—Section 401 (a) (relating to requirements for
2 qualification) is amended by adding at the end thereof
3 the following new sentences: "Paragraphs (11), (12),
4 (13), (14), (15), and (19) shall apply only in the
5 case of a plan to which section 411 (relating to mini-
6 mum vesting standards) applies. Any regulation pre-
7 scribed by the Secretary or his delegate for purposes
8 of paragraph (11), (12), (13), (14), (15), or (19)
9 shall be effective for any plan year beginning after
10 December 31, 1975, only if approved by the Sec-
11 retary of Labor."

12 (b) REQUIREMENTS IN CASE OF MERGERS AND CON-
13 SOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—
14 Section 401 (a) is amended by inserting after paragraph
15 (11) the following new paragraph:

16 "(12) A trust shall not constitute a qualified trust
17 under this section unless the plan of which such trust is
18 a part provides that—

19 "(A) in the case of any merger or consolida-
20 tion with, or transfer of assets or liabilities to, any
21 other plan after October 22, 1973, each participant
22 in the plan would (if the plan then terminated)
23 receive a benefit immediately after the merger, con-
24 solidation, or transfer which is equal to or greater
25 than the benefit he would have been entitled to

1 receive immediately before the merger, consolida-
2 tion, or transfer (if the plan had then terminated);
3 and
4 "(B) no merger, consolidation, or transfer of
5 assets or liabilities to another plan may be made
6 after the date of the enactment of this paragraph un-
7 less the plan administrator has filed with the Secre-
8 tary or his delegate, at least 30 days before such
9 merger, consolidation, or transfer, an actuarial state-
10 ment of valuation evidencing compliance with the
11 requirements of subparagraph (A)."
12 (c) RETIREMENT BENEFITS MAY NOT BE ASSIGNED
13 OR ALIENATED.—Section 401(a) is amended by inserting
14 after paragraph (12) the following new paragraph:
15 "(13) A trust shall not constitute a qualified trust
16 under this section unless the plan of which such trust
17 is a part provides that benefits provided under the plan
18 may not be assigned or alienated. For purposes of the
19 preceding sentence, there shall not be taken into ac-
20 count any voluntary and revocable assignment of not to
21 exceed 10 percent of any benefit payment."
22 (d) REQUIREMENT THAT PAYMENT OF BENEFITS
23 BEGIN NOT LATER THAN WHEN THE PARTICIPANT AT-
24 TAINS AGE 65 OR HAS COMPLETED 10 YEARS OF PARTICI-

1 PATION.—Section 401 (a) is amended by inserting after
2 paragraph (13) the following new paragraph:
3 "(14) A trust shall not constitute a qualified trust
4 under this section unless the plan of which such trust is a
5 part provides that, unless the participant otherwise
6 elects, the payment of benefits under the plan to the par-
7 ticipant will begin not later than the 60th day after the
8 latest of the close of the plan year in which—
9 "(A) the date on which the participant at-
10 tains age 65,
11 "(B) occurs the 10th anniversary of the year
12 in which the participant commenced participation
13 in the plan, or
14 "(C) the participant terminates his service
15 with the employer."
16 (e) REQUIREMENT THAT PLAN BENEFITS ARE NOT
17 DECREASED BY CERTAIN SOCIAL SECURITY INCREASES.—
18 Section 401 (a) is amended by inserting after paragraph
19 (14) the following new paragraph:
20 "(15) a trust shall not constitute a qualified trust
21 under this section unless under the plan of which such
22 trust is a part—
23 "(A) in the case of a participant or beneficiary
24 who is receiving benefits under such plan, or
25 "(B) in the case of a participant who is sepa-

1 rated from the service and who has nonforfeitable
2 rights to benefits,
3 such benefits are not decreased by reason of any increase
4 in the benefit levels payable under title II of the Social
5 Security Act, if such increase in benefit levels takes place
6 after the date of the enactment of this paragraph or (if
7 later) the date of first receipt of such benefits or the
8 date of such separation, as the case may be."
9 (f) REQUIREMENT OF NONFORFEITABILITY IN CASE
10 OF CERTAIN WITHDRAWALS.—Section 401 (a) is amended
11 by inserting after paragraph (18) the following new para-
12 graph:
13 "(19) A trust shall not constitute a qualified trust
14 under this section if under the plan of which such trust
15 is a part any part of a participant's accrued benefit
16 derived from employer contributions, to the extent non-
17 forfeitable as determined under section 411, is forfeitable
18 solely because of withdrawal by such participant of any
19 amount attributable to the benefit derived from contribu-
20 tions made by such participant."
21 SEC. 1022. MISCELLANEOUS PROVISIONS.
22 (a) REQUIREMENT THAT PLAN NOT BE DISCRIMI-
23 NATORY.—Section 401 (a) (4) (disqualifying discriminatory
24 plans) is amended to read as follows:

1 "(4) If the contributions or the benefits provided
2 under the plan do not discriminate in favor of employees
3 who are—
4 "(A) officers,
5 "(B) shareholders, or
6 "(C) highly compensated."
7 (b) AMENDMENTS RELATING TO SELF-EMPLOYED
8 INDIVIDUALS AND OWNER-EMPLOYEES.—
9 (1) AMENDMENT OF SECTION 401(a)(10).—So
10 much of subparagraph (A) of section 401(a)(10) as
11 precedes clause (i) thereof is amended to read as
12 follows:
13 "(A) paragraph (3), the first and second sen-
14 tences of paragraph (5), and section 410 shall not
15 apply, but—".
16 (2) AMENDMENT OF SECTION 401(d)(3).—Sec-
17 tion 401(d)(3) (relating to additional requirements
18 for qualification of trusts and plans benefiting owner-
19 employees) is amended to read as follows:
20 "(3)(A) The plan benefits each employee having
21 3 or more years of service (within the meaning of sec-
22 tion 410(a)(3)).
23 "(B) For purposes of subparagraph (A), the term
24 'employee' does not include—
25 "(i) any employee included in a unit of em-

1 ployees covered by a collective bargaining agree-
2 ment described in section 410(b) (2) (A), and
3 "(ii) any employee who is a nonresident alien
4 individual described in section 410(b) (2) (C)."
5 (c) PERSONS OTHER THAN BANKS MAY BE TRUST-
6 EES OF TRUSTS BENEFITING OWNER-EMPLOYEES.—
7 (1) The first sentence of section 401(d) (1) is
8 amended to read as follows: "In the case of a trust
9 which is created on or after October 10, 1962, or which
10 was created before such date but is not exempt from tax
11 under section 501(a) as an organization described in
12 subsection (a) on the day before such date, the assets
13 thereof are held by a bank or other person who demon-
14 strates to the satisfaction of the Secretary or his delegate
15 that the manner in which he will hold such assets will
16 be consistent with the requirements of this section. A
17 trust shall not be disqualified under this paragraph
18 merely because a person (including the employer) other
19 than the trustee or custodian so holding plan assets may
20 be granted, under the trust instrument, the power to
21 control the investment of the trust funds either by direct-
22 ing investments (including reinvestments, disposals, and
23 exchanges) or by disapproving proposed investments
24 (including reinvestments, disposals, or exchanges)."
25 (2) The second sentence of section 401(d) (1)

1 is amended by striking out "the date of the enactment
2 of this subsection" and inserting in lieu thereof "Octo-
3 ber 10, 1962,".
4 (d) CERTAIN CUSTODIAL ACCOUNTS.—Effective as of
5 January 1, 1974, subsection (f) of section 401 (relating to
6 certain custodial accounts) is amended to read as follows:
7 "(f) CERTAIN CUSTODIAL ACCOUNTS AND ANNUITY
8 CONTRACTS.—For purposes of this title, a custodial account
9 or an annuity contract shall be treated as a qualified trust
10 under this section if—
11 "(1) the custodial account or annuity contract
12 would, except for the fact that it is not a trust, constitute
13 a qualified trust under this section, and
14 "(2) the assets thereof are held by a bank (as de-
15 fined in subsection (d) (1)) or another person who
16 demonstrates, to the satisfaction of the Secretary or his
17 delegate, that the manner in which he will hold the
18 assets will be consistent with the requirements of this
19 section.
20 For purposes of this title, in the case of a custodial account
21 or annuity contract treated as a qualified trust under this
22 section by reason of this subsection, the person holding the
23 assets of such account or holding such contract shall be treated
24 as the trustee thereof."
25 (e) CUSTODIAL ACCOUNTS FOR REGULATED INVEST-

1 MENT COMPANY STOCK.—Effective as of January 1, 1974,
2 section 403 (b) (relating to taxability of beneficiary under
3 annuity purchased by section 501 (c) (3) organization or
4 public school) is amended by adding at the end thereof the
5 following new paragraph:

6 "(7) CUSTODIAL ACCOUNTS FOR REGULATED IN-
7 VESTMENT COMPANY STOCK.—

8 "(A) AMOUNTS PAID TREATED AS CONTRIBU-
9 TIONS.—For purposes of this title, amounts paid by
10 an employer described in paragraph (1) (A) to a
11 custodial account which satisfies the requirements of
12 section 401 (f) (2) shall be treated as amounts con-
13 tributed by him for an annuity contract for his em-
14 ployee if the amounts are paid to provide a retire-
15 ment benefit for that employee and are to be in-
16 vested in regulated investment company stock to be
17 held in that custodial account.

18 "(B) ACCOUNT TREATED AS PLAN.—For pur-
19 poses of this title, a custodial account which satis-
20 fies the requirements of section 401 (f) (2) shall be
21 treated as an organization described in section 401
22 (a) solely for purposes of subchapter F and sub-
23 title F with respect to amounts received by it (and
24 income from investment thereof) which are ex-
25 cluded under this subsection from the gross income

of the employees on whose behalf such amounts are paid.

"(C) REGULATED INVESTMENT COMPANY.—For purposes of this paragraph, the term 'regulated investment company' means a domestic corporation which is a regulated investment company within the meaning of section 851 (a), and which issues only redeemable stock."

(f) INSURED CREDIT UNIONS.—Effective as of January 1, 1974, the last sentence of section 401 (d) (1) is amended by striking out "section 581," and inserting in lieu thereof "section 581, an insured credit union (within the meaning of section 101 (6) of the Federal Credit Union Act),".

(g) PUBLIC INSPECTION OF CERTAIN INFORMATION WITH RESPECT TO PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.—

(1) AMENDMENT OF SECTION 6104 (a).—Paragraph (1) of section 6104 (a) (relating to public inspection of applications for tax exemption) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D) and by inserting after subparagraph (A) the following new subparagraphs:

"(B) PENSION, ETC., PLANS.—The following shall be open to public inspection at such times

1 and in such places as the Secretary or his dele-
2 gate may prescribe:
3 "(i) any application filed with respect to
4 the qualification of a pension, profit-sharing, or
5 stock bonus plan under section 401(a), 403
6 (a), or 405(a), under an individual retirement
7 account described in section 408(a), or under
8 an individual retirement annuity described in
9 section 408(b),
10 "(ii) any application filed with respect to
11 the exemption from tax under section 501(a)
12 of an organization forming part of a plan or
13 account referred to in clause (i),
14 "(iii) any papers submitted in support of
15 an application referred to in clause (i) or (ii),
16 and
17 "(iv) any letter or other document is-
18 sued by the Internal Revenue Service and deal-
19 ing with the qualification referred to in clause
20 (i) or the exemption from tax referred to in
21 clause (ii).
22 "(C) CERTAIN NAMES AND COMPENSATION
23 NOT TO BE OPENED TO PUBLIC INSPECTION.—In
24 the case of any application, document, or other
25 papers, referred to in subparagraph (B), informa-

1 tion from which the compensation (including de-
2 ferred compensation) of any participant may be
3 ascertained shall not be opened to public inspection
4 under subparagraph (B)."
5 (B) The heading of subparagraph (A) of sec-
6 tion 6104 (a) (1) is amended to read as follows:
7 "(A) ORGANIZATIONS DESCRIBED IN SECTION
8 501.—".
9 (C) The heading of subparagraph (D) of sec-
10 tion 6104 (a) (1) (as redesignated by subparagraph
11 (A) of this paragraph) is amended to read as
12 follows:
13 "(D) WITHHOLDING OF CERTAIN OTHER
14 INFORMATION.—".
15 (D) Subparagraph (D) of section 6104 (a)
16 (1) (as so redesignated) is amended by striking out
17 "subparagraph (A)" each place it appears and
18 inserting in lieu thereof "subparagraph (A) or
19 (B)".
20 (2) AMENDMENT OF SECTION 6104(a)(2).—Sub-
21 paragraph (A) of section 6104 (a) (2) is amended by
22 adding at the end thereof "any application referred to in
23 subparagraph (B) of subsection (a) (1) of this section,
24 and".
25 (3) AMENDMENT OF SECTION 6104(b).—Section

1 6104 (b) (relating to inspection of annual information
2 returns) is amended by striking out "and 6056" and
3 inserting in lieu thereof "6056, and 6058".
4 (4) EFFECTIVE DATE.—The amendments made by
5 this subsection shall apply to applications filed (or
6 documents issued) after December 31, 1975.
7 (h) CERTAIN PUERTO RICAN PENSION, ETC., PLANS
8 TO BE EXEMPT FROM TAX UNDER SECTION 501 (a).—
9 Effective for taxable years beginning after December 31,
10 1973, for purposes of section 501 (a) of the Internal Revenue
11 Code of 1954 (relating to exemption from tax), any trust
12 forming part of a pension, profit-sharing, or stock bonus
13 plan all of the participants of which are residents of the
14 Commonwealth of Puerto Rico shall be treated as an orga-
15 nization described in section 401 (a) of such Code if such
16 trust—
17 (1) forms a part of a pension, profit-sharing, or
18 stock bonus plan, and
19 (2) is exempt from income tax under the laws of
20 the Commonwealth of Puerto Rico.
21 (i) YEAR OF DEDUCTION FOR CERTAIN EMPLOYER
22 CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED
23 BY FOREIGN LAW.—Effective for taxable years beginning
24 after December 31, 1973, if—

1 (1) an employer is engaged in a trade or business
2 in a foreign country,
3 (2) such employer is required by the laws of that
4 country to make payments, based on periods of service,
5 to its employees or their beneficiaries after the em-
6 ployees' retirement, death, or other separation from the
7 service, and
8 (3) such employer establishes a trust (whether or-
9 ganized within or outside the United States) for the
10 purpose of funding the payments required by such law,
11 then, in determining for purposes of paragraph (5) of sec-
12 tion 404 (a) of the Internal Revenue Code of 1954 the tax-
13 able year in which any contribution to or under the plan is
14 includible in the gross income of the nonresident alien em-
15 ployees of such employer, such paragraph (5) shall be
16 treated as not requiring that separate accounts be maintained
17 for such nonresident alien employees.
18 SEC. 1023. STUDY OF GOVERNMENTAL PLANS.
19 (a) STUDY.—The Committee on Ways and Means and
20 the Committee on Education and Labor of the House of
21 Representatives shall study retirement plans established and
22 maintained or financed (directly or indirectly) by the Gov-
23 ernment of the United States, by any State (including the
24 District of Columbia) or political subdivision thereof, or by

1 any agency or instrumentality of any of the foregoing. Such
2 study shall include an analysis of—
3 (1) the adequacy of existing levels of participation,
4 vesting, and financing arrangements,
5 (2) existing fiduciary standards,
6 (3) the unique circumstances affecting mobility of
7 government employees and individuals employed under
8 Federal procurement, construction, or research contracts
9 or grants, and
10 (4) the necessity for Federal legislation and stand-
11 ards with respect to such plans.
12 In determining whether any such plan is adequately financed,
13 each committee shall consider the necessity for minimum
14 funding standards, as well as the taxing power of the gov-
15 ernment maintaining the plan.
16 (b) REPORTS AND RECOMMENDATIONS.—Not later
17 than December 31, 1976, the Committee on Ways and
18 Means and the Committee on Education and Labor shall each
19 submit to the House of Representatives the results of the
20 studies conducted under subsection (a), together with such
21 recommendations as may be appropriate.
22 **SEC. 1024. PROTECTION FOR EMPLOYEES UNDER FED-**
23 **ERAL PROCUREMENT, CONSTRUCTION, OR**
24 **RESEARCH CONTRACTS OR GRANTS.**
25 (a) SECRETARY OF LABOR TO CONDUCT STUDY.—

1 The Secretary of Labor shall, during the 2-year period
2 beginning on the date of the enactment of this Act, con-
3 duct a full and complete study and investigation of the
4 steps necessary to be taken to insure that professional,
5 scientific, and technical personnel and others working in
6 associated occupations employed under Federal procure-
7 ment, construction, or research contracts or grants will,
8 to the extent feasible, be protected against forfeitures of
9 pension or retirement rights or benefits, otherwise provided.
10 as a consequence of job transfers or loss of employment
11 resulting from terminations or modifications of Federal
12 contracts, grants, or procurement policies. The Secretary
13 of Labor shall report the results of its study and investiga-
14 tion to the Congress within 2 years after the date of the
15 enactment of this Act.

16 (b) CONSULTATION.—In the course of conducting the
17 study and investigation described in subsection (a), and
18 in developing the regulations referred to in subsection (c),
19 the Secretary of Labor shall consult—

20 (1) with appropriate professional societies, busi-
21 ness organizations, and labor organizations, and

22 (2) with the heads of interested Federal depart-
23 ments and agencies.

24 (c) DEVELOPMENT OF REGULATIONS.—Within 1 year
25 after the date on which he submits his report to the Con-

1 gress under subsection (a), the Secretary of Labor shall,
2 if he determines it to be feasible, develop regulations which
3 will provide the protection of pension and retirement rights
4 and benefits referred to in subsection (a).

5 (d) EITHER HOUSE MAY DISAPPROVE REGULA-
6 TIONS.—

7 (1) IN GENERAL.—Any regulations developed pur-
8 suant to subsection (c) shall take effect if, and only
9 if—

10 (A) the Secretary of Labor, not later than
11 the day which is 3 years after the date of the
12 enactment of this Act, delivers a copy of such reg-
13 ulations to the House of Representatives and a
14 copy to the Senate, and

15 (B) before the close of the 90-day period
16 which begins on the day on which the copies of
17 such regulations are delivered to the House of Rep-
18 resentatives and to the Senate, neither the House
19 of Representatives nor the Senate adopts, by an
20 affirmative vote of a majority of those present and
21 voting in that House, a resolution of disapproval.

22 (2) RESOLUTION OF DISAPPROVAL.—For pur-
23 poses of this subsection, the term "resolution of disap-
24 proval" means only a resolution of either House of
25 Congress, the matter after the resolving clause of which

1 is as follows: "That the does not favor
2 the taking effect of the regulations transmitted to the
3 Congress by the Secretary of Labor on ",
4 the first blank space therein being filled with the name
5 of the resolving House and the second blank space
6 therein being filled with the day and year.

7 (3) REFERENCE OF RESOLUTION TO COMMIT-
8 TEE.—A resolution of disapproval in the House of
9 Representatives shall be referred to the Committee on
10 Education and Labor. A resolution of disapproval in the
11 Senate shall be referred to the Committee on Labor and
12 Public Welfare.

13 (4) DISCHARGE OF COMMITTEE CONSIDERING
14 RESOLUTION.—

15 (A) If the Committee to which a resolution of
16 disapproval has been referred has not reported it at
17 the end of 7 calendar days after its introduction, it
18 is in order to move either to discharge the committee
19 from further consideration of the resolution or to
20 discharge the committee from further consideration
21 of any other resolution of disapproval which has been
22 referred to the committee.

23 (B) A motion to discharge may be made only
24 by an individual favoring the resolution, is highly
25 privileged (except that it may not be made after

1 the committee has reported a resolution of dis-
2 approval), and debate thereon shall be limited to
3 not more than 1 hour, to be divided equally between
4 those favoring and those opposing the resolution. An
5 amendment to the motion is not in order, and it is
6 not in order to move to reconsider the vote by
7 which the motion is agreed to or disagreed to.
8 (C) If the motion to discharge is agreed to
9 or disagreed to, the motion may not be renewed,
10 nor may another motion to discharge the commit-
11 tee be made with respect to any other resolution
12 of disapproval.
13 (5) PROCEDURE AFTER REPORT OR DISCHARGE OF
14 COMMITTEE; DEBATE.—
15 (A) When the committee has reported, or has
16 been discharged from further consideration of, a
17 resolution of disapproval, it is at any time thereafter
18 in order (even though a previous motion to the
19 same effect has been disagreed to) to move to
20 proceed to the consideration of the resolution. The
21 motion is highly privileged and is not debatable.
22 An amendment to the motion is not in order, and
23 it is not in order to move to reconsider the vote by
24 which the motion is agreed to or disagreed to.
25 (B) Debate on the resolution of disapproval

1 shall be limited to not more than 10 hours, which
2 shall be divided equally between those favoring and
3 those opposing the resolution. A motion further to
4 limit debate is not debatable. An amendment to,
5 or motion to recommit, the resolution is not in order,
6 and it is not in order to move to reconsider the vote
7 by which the resolution is agreed to or disagreed to.
8 (6) DECISIONS WITHOUT DEBATE ON MOTION TO
9 POSTPONE OR PROCEED.—
10 (A) Motions to postpone, made with respect
11 to the discharge from committee or the consideration
12 of a resolution of disapproval, and motions to pro-
13 ceed to the consideration of other business, shall be
14 decided without debate.
15 (B) Appeals from the decisions of the Chair
16 relating to the application of the rules of the House
17 of Representatives or the Senate, as the case may
18 be, to the procedure relating to any resolution of
19 disapproval shall be decided without debate.
20 (7) COPIES TO BE PRESENTED ON SAME DAY.—
21 Whenever the Secretary of Labor transmits copies of
22 the regulations to the Congress, a copy of such regula-
23 tions shall be delivered to each House of Congress on
24 the same day and shall be delivered to the Clerk of the
25 House of Representatives if the House is not in session

1 and to the Secretary of the Senate if the Senate is not
2 in session.
3 (8) DETERMINATION OF 90-DAY PERIOD.—The 90-
4 day period referred to in paragraph (1) shall be com-
5 puted by excluding—
6 (A) the days on which either House is not in
7 session because of an adjournment of more than 3
8 days to a day certain or an adjournment of the Con-
9 gress sine die, and
10 (B) any Saturday and Sunday, not excluded
11 under subparagraph (A), when either House is not
12 in session.
13 (9) RULES OF HOUSE OF REPRESENTATIVES AND
14 SENATE ON RESOLUTIONS OF DISAPPROVAL.—This sub-
15 section is enacted by the Congress—
16 (A) as an exercise of the rulemaking power of
17 the House of Representatives and the Senate, re-
18 spectively, and as such they are deemed a part of
19 the rules of each House, respectively, but applicable
20 only with respect to the procedure to be followed in
21 that House in the case of resolutions of disapproval
22 described in paragraph (2); and they supersede
23 other rules only to the extent that they are incon-
24 sistent therewith; and

1 (B) with full recognition of the constitutional
2 right of either House to change the rules (so far as
3 relating to the procedure of that House) at any
4 time, in the same manner and to the same extent as
5 in the case of any other rule of that House.

6 **SEC. 1025. RETROACTIVE CHANGES IN PLAN.**

7 Section 401 (b) (relating to certain retroactive changes
8 in plan) is amended to read as follows:

9 "(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—
10 A stock bonus, pension, profit-sharing, or annuity plan shall
11 be considered as satisfying the requirements of subsection (a)
12 for the period beginning with the date on which it was put
13 into effect, or for the period beginning with the earlier of
14 the date on which there was adopted or put into effect any
15 amendment which caused the plan to fail to satisfy such
16 requirements, and ending with the time prescribed by law
17 for filing the return of the employer for his taxable year in
18 which such plan or amendment was adopted (including
19 extensions thereof) or such later time as the Secretary or
20 his delegate may designate, if all provisions of the plan which
21 are necessary to satisfy such requirements are in effect by the
22 end of such period and have been made effective for all pur-
23 poses for the whole of such period."

24 **SEC. 1026. EFFECTIVE DATES.**

25 The amendments made by section 1021 shall apply to

1 plan years to which part I applies. Except as otherwise
2 provided in section 1022, the amendments made by section
3 1022 shall apply to plan years to which part I applies. Sec-
4 tions 1023 and 1024 and the amendment made by section
5 1025 shall take effect on the date of the enactment of this
6 Act.

7 **PART III—REGISTRATION AND INFORMATION**

8 **SEC. 1031. REGISTRATION AND INFORMATION.**

9 (a) ANNUAL REGISTRATION AND INFORMATION RE-
10 TURNS.—Part III of subchapter A of chapter 61 (relating
11 to information returns) is amended by adding at the end
12 thereof the following new subpart;

13 **"Subpart E—Registration of and Information Concerning**
14 **Pension, Etc., Plans**

"Sec. 6057. Annual registration, etc.
"Sec. 6058. Information required in connection with certain plans of deferred compensation.
"Sec. 6059. Periodic report by actuary.

15 **"SEC. 6057. ANNUAL REGISTRATION, ETC.**

16 "(a) ANNUAL REGISTRATION.—

17 "(1) GENERAL RULE.—Within such period after
18 the end of a plan year as the Secretary or his delegate
19 may by regulations prescribe, the plan administrator
20 (within the meaning of section 414 (g)) of each funded
21 plan to which part I of subchapter D of chapter 1 applied
22 for such plan year shall file a registration statement with
23 the Secretary or his delegate.

1 "(2) CONTENTS.—The registration statement re-
2 quired by paragraph (1) shall set forth—
3 "(A) the name of the plan,
4 "(B) the name and address of the plan ad-
5 ministrator,
6 "(C) the name and taxpayer identifying num-
7 ber of each participant in the plan—
8 "(i) who, during such plan year, sepa-
9 rated from the service covered by the plan,
10 "(ii) who is entitled to a deferred vested
11 benefit under the plan as of the end of such plan
12 year, and
13 "(iii) with respect to whom retirement
14 benefits were not paid under the plan during
15 such plan year,
16 "(D) the nature, amount, and form of the
17 deferred vested benefit to which such participant is
18 entitled, and
19 "(E) such other information as the Secretary
20 or his delegate may require.
21 At the time he files the registration statement under this
22 subsection, the plan administrator shall furnish evidence
23 satisfactory to the Secretary or his delegate that he has
24 complied with the requirement contained in subsection
25 (e).

1 "(b) NOTIFICATION OF CHANGE IN STATUS.—Any
2 plan administrator required to register under subsection (a)
3 shall also notify the Secretary or his delegate, at such time
4 as may be prescribed by regulations, of—
5 "(1) any change in the name of the plan,
6 "(2) any change in the name or address of the
7 plan administrator,
8 "(3) the termination of the plan, or
9 "(4) the merger or consolidation of the plan with
10 any other plan or its division into two or more plans.
11 "(c) VOLUNTARY REPORTS. To the extent provided
12 in regulations prescribed by the Secretary or his delegate,
13 the Secretary or his delegate may receive from—
14 "(1) any plan to which subsection (a) applies, and
15 "(2) any other plan (including any governmental
16 plan or church plan (within the meaning of section
17 414)),
18 such information (including information relating to plan
19 years beginning before January 1, 1974) as the plan admin-
20 istrator may wish to file with respect to the deferred vested
21 benefit rights of any participant separated from the service
22 covered by the plan during any plan year.
23 "(d) TRANSMISSION OF INFORMATION TO SECRETARY
24 OF HEALTH, EDUCATION, AND WELFARE.—The Secretary
25 or his delegate shall transmit copies of any statements, noti-

1 fications, reports, or other information obtained by him under
2 this section to the Secretary of Health, Education, and
3 Welfare.

4 "(e) INDIVIDUAL STATEMENT TO PARTICIPANT.—
5 Each plan administrator required to file a registration state-
6 ment under subsection (a) shall, before the expiration of
7 the time prescribed for the filing of such registration state-
8 ment, also furnish to each participant described in subsection
9 (a) (2) (C) an individual statement setting forth the in-
10 formation with respect to such participant required to be
11 contained in such registration statement.

12 "(f) REGULATIONS.—

13 "(1) IN GENERAL.—The Secretary, after consulta-
14 tion with the Secretary of Health, Education, and Wel-
15 fare, may prescribe such regulations as may be necessary
16 to carry out the provisions of this section. Regulations
17 prescribed for purposes of this section shall be effective
18 with respect to plan years beginning after December 31,
19 1975, only if approved by the Secretary of Labor.

20 "(2) MULTIEMPLOYER PLANS.—This section shall
21 apply to any multiemployer plan only to the extent
22 provided in regulations prescribed under this subsection.
23 For purposes of this paragraph, the term 'multiemployer
24 plan' means a plan to which more than one employer is
25 required to contribute.

1 "(g) CROSS REFERENCE.—

"For provisions relating to penalties for failure to register or furnish statements required by this section, see section 6652(e) and section 6690.

2 **"SEC. 6058. INFORMATION REQUIRED IN CONNECTION**
3 **WITH CERTAIN PLANS OF DEFERRED COM-**
4 **PENSATION.**

5 "(a) IN GENERAL.—Every employer who maintains
6 a pension, annuity, stock bonus, profit-sharing, or other
7 funded plan of deferred compensation described in part I
8 of subchapter D of chapter 1, or the plan administrator
9 (within the meaning of section 414 (g)) of the plan, shall
10 file an annual return stating such information as the Secre-
11 tary or his delegate may by or regulations prescribe
12 with respect to the qualification, financial condition, and
13 operations of the plan; except that, in the discretion of the
14 Secretary or his delegate, the employer may be relieved
15 from stating in its return any information which is reported
16 in other returns.

17 "(b) EMPLOYER.—For purposes of this section, the term
18 'employer' includes a person described in section 401 (c) (4)
19 and an individual who establishes an individual retirement
20 account or annuity described in section 408.

21 "(c) CROSS REFERENCE.—

"For provisions relating to penalties for failure to file a return required by this section, see section 6652(f)."

22 (b) SANCTIONS.—

1 (1) FAILURE TO FILE REGISTRATION STATE-
2 MENTS OR NOTIFICATION OF CHANGE IN STATUS.—
3 (A) Section 6652 (relating to failure to file
4 certain information returns) is amended by re-
5 designating subsection (e) as subsection (g) and by
6 inserting after subsection (d) the following new
7 subsections:
8 "(e) ANNUAL REGISTRATION AND OTHER NOTIFICA-
9 TION BY PENSION PLAN.—
10 "(1) REGISTRATION.—In the case of any failure to
11 file a registration statement required under section 6057
12 (a) (relating to annual registration of certain plans)
13 which includes all participants required to be included in
14 such statement, on the date prescribed therefor (deter-
15 mined without regard to any extension of time for fil-
16 ing), unless it is shown that such failure is due to reason-
17 able cause, there shall be paid (on notice and demand by
18 the Secretary or his delegate and in the same manner as
19 tax) by the person failing so to file, an amount equal
20 to $1 for each participant with respect to whom there
21 is a failure to file, multiplied by the number of days
22 during which such failure continues, but the total amount
23 imposed under this paragraph on any person for any fail-
24 ure to file with respect to any plan year shall not
25 exceed $5,000.

1 "(2) NOTIFICATION OF CHANGE OF STATUS.—In
2 the case of failure to file a notification required under sec-
3 tion 6057(b) (relating to notification of change of
4 status) on the date prescribed therefor (determined
5 with regard to any extension of time for filing), unless
6 it is shown that such failure is due to reasonable cause,
7 there shall be paid (on notice and demand by the Sec-
8 retary or his delegate and in the same manner as tax)
9 by the person failing so to file, $1 for each day during
10 which such failure continues, but the total amounts im-
11 posed under this paragraph on any person for failure to
12 file any notification shall not exceed $1,000.
13 "(f) INFORMATION REQUIRED IN CONNECTION WITH
14 CERTAIN PLANS OF DEFERRED COMPENSATION.—In the
15 case of failure to file a return required under section 6058
16 (relating to information required in connection with certain
17 plans of deferred compensation) or 6047 (relating to in-
18 formation relating to certain trusts and annuity and bond
19 purchase plans) on the date and in the manner prescribed
20 therefor (determined with regard to any extension of time
21 for filing), unless it is shown that such failure is due to
22 reasonable cause, there shall be paid (on notice and demand
23 by the Secretary or his delegate and in the same manner
24 as tax) by the person failing so to file, $10 for each day
25 during which such failure continues, but the total amount

1 imposed under this subsection on any person for failure to file
2 any return shall not exceed $5,000."
3 (B) (i) The section heading for section 6652
4 is amended by adding ", REGISTRATION STATE-
5 MENTS, ETC." before the period at the end thereof.
6 (ii) The item relating to section 6652 in the
7 table of contents for subchapter A of chapter 68 is
8 amended by adding ", registration statements, etc."
9 before the period at the end thereof.
10 (2) FAILURE TO FURNISH STATEMENT TO PAR-
11 TICIPANT.—
12 (A) Subchapter B of chapter 68 (relating to
13 assessable penalties) is amended by adding at the
14 end thereof the following new section:
15 "SEC. 6691. FRAUDULENT STATEMENT OR FAILURE TO
16 FURNISH STATEMENT TO PLAN PARTICI-
17 PANT.
18 "Any person required under section 6057 (e) to fur-
19 nish a statement to a participant who willfully furnishes a
20 false or fraudulent statement, or who willfully fails to furnish
21 a statement in the manner, at the time, and showing the in-
22 formation required under section 6057 (e), or regulations
23 prescribed thereunder, shall for each such act, or for each
24 such failure, be subject to a penalty under this subchapter
25 of $50, which shall be assessed and collected in the same

1 manner as the tax on employers imposed by section 3111."

2 (B) The table of sections for such subchapter B

3 is amended by adding at the end thereof the follow-

4 ing new item:

"Sec. 6691. Fraudulent statement or failure to furnish statement to plan participant."

5 (c) CLERICAL AMENDMENTS.—

6 (1) The table of subparts for such part III is

7 amended by adding at the end thereof the following:

"Subpart E. Registration of and information concerning pension, etc., plans."

8 (2) Section 6033 (c) (relating to cross references)

9 is amended by adding at the end thereof the following:

"For provisions relating to information required in connection with certain plans of deferred compensation, see section 6058."

10 (3) Subsection (d) of section 6047 (relating to

11 information with respect to certain trusts and annuity

12 and bond purchase plans) is amended to read as follows:

13 "(d) CROSS REFERENCES.—

"(1) For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).
"(2) For criminal penalty for furnishing fraudulent information, see section 7207."

14 SEC. 1032. DUTIES OF SECRETARY OF HEALTH, EDUCA-

15 TION, AND WELFARE.

16 Title XI of the Social Security Act (relating to general

17 provisions) is amended by adding at the end of part A

18 thereof the following new section:

1 "NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH
2 RESPECT TO DEFERRED VESTED BENEFITS
3 "SEC. 1131. (a) Whenever—
4 "(1) the Secretary makes a finding of fact and
5 a decision as to—
6 "(A) the entitlement of any individual to
7 monthly benefits under section 202, 223, or 228,
8 "(B) the entitlement of any individual to a
9 lump-sum death payment payable under section 202
10 (i) on account of the death of any person to whom
11 such individual is related by blood, marriage, or
12 adoption, or
13 "(C) the entitlement under section 226 of any
14 individual to hospital insurance benefits under part
15 A of title XVIII, or
16 "(2) the Secretary is requested to do so—
17 "(A) by any individual with respect to whom
18 the Secretary holds information obtained under sec-
19 tion 6057 of the Internal Revenue Code of 1954, or
20 "(B) in the case of the death of the individual
21 referred to in subparagraph (A), by the individual
22 who would be entitled to payment under section
23 204 (d) of this Act,
24 he shall transmit to the individual referred to in paragraph
25 (1) or the individual making the request under paragraph

1 (2) any information, as reported by the employer, regard-
2 ing any deferred vested benefit transmitted to the Secretary
3 pursuant to such section 6057 (or under section 106 of the
4 Employee Benefit Security Act of 1974) with respect to the
5 individual referred to in paragraph (1) or (2) (A) or the
6 person on whose wages and self-employment income entitle-
7 ment (or claim of entitlement) is based.

8 "(b) (1) For purposes of section 201 (g) (1), ex-
9 penses incurred in the administration of subsection (a) shall
10 be deemed to be expenses incurred for the administration of
11 title II.

12 "(2) There are hereby authorized to be appropriated to
13 the Federal Old-Age and Survivors Insurance Trust Fund
14 for each fiscal year (commencing with the fiscal year ending
15 June 30, 1974) such sums as the Secretary deems neces-
16 sary on account of additional administrative expenses result-
17 ing from the enactment of the provisions of subsection (a)."

18 **SEC. 1033. ENROLLMENT OF AND REPORTS BY ACTUARIES.**

19 (a) REPORTS BY ACTUARIES.—Subpart E of part III
20 of subchapter A of chapter 61 (relating to registration of
21 and information concerning pension, etc., plans) is amended
22 by adding at the end thereof the following new section:

23 **"SEC. 6059. PERIODIC REPORT OF ACTUARY.**

24 "(a) GENERAL RULE.—The actuarial report described
25 in subsection (b) shall be filed by the plan administrator

1 (as defined in section 414 (g)) of each defined benefit plan
2 to which section 412 applies, for the first plan year for
3 which section 412 applies to the plan and for each third
4 plan year thereafter (or more frequently if the Secretary
5 or his delegate determines that more frequent reports are
6 necessary).

7 "(b) ACTUARIAL REPORT.—The actuarial report of a
8 plan required by subsection (a) shall be prepared and signed
9 by an enrolled actuary (within the meaning of section 7517)
10 and shall contain—

11 "(1) a description of the plan,

12 "(2) a description of the funding method and
13 actuarial assumptions used to determine costs under the
14 plan,

15 "(3) a certification as to whether the funding stand-
16 ard account required under section 412 (b) (1) has been
17 maintained during the period to which the report relates,

18 "(4) such other information regarding the plan
19 as the Secretary or his delegate may by regulations re-
20 quire, and

21 "(5) a statement—

22 "(A) that to the best of his knowledge the
23 report is complete and accurate, and

24 "(B) of his opinion regarding the reasonable-
25 ness of the funding method and actuarial assump-

1 tions used to determine the normal costs under the
2 plan.
3 "(c) TIME AND MANNER OF FILING.—The actuarial
4 report and statement required by this section shall be filed
5 at the time and in the manner provided by regulations pre-
6 scribed by the Secretary or his delegate."
7 (b) ASSESSABLE PENALTIES.—Subchapter B of chap-
8 ter 68 (relating to assessable penalties) is amended by
9 adding at the end thereof the following new section:
10 "SEC. 6692. FAILURE TO FILE ACTUARIAL REPORT.
11 "The plan administrator (as defined in section 414 (g))
12 of each defined benefit plan to which section 412 applies
13 who fails to file the report required by section 6059 at the
14 time and in the manner required by section 6059, shall pay
15 a penalty of $1,000 for each such failure unless it is shown
16 that such failure is due to reasonable cause."
17 (c) ENROLLMENT OF ACTUARIES.—Chapter 77 (relat-
18 ing to miscellaneous provisions) is amended by inserting at
19 the end thereof the following new section:
20 "SEC. 7517. ENROLLMENT OF ACTUARIES.
21 "The Secretary or his delegate shall, by regulations,
22 establish reasonable standards and qualifications for persons
23 performing actuarial services described in section 401 (a)
24 (12) or 6059 and, upon application by any individual,
25 shall enroll such individual if the Secretary or his delegate

1 finds that such individual satisfies such standards and quali-
2 fications. With respect to individuals applying for enroll-
3 ment before January 1, 1976, such standards and qualifi-
4 cations shall include a requirement for an appropriate period
5 of responsible actuarial experience or of responsible experi-
6 ence in the administration of pension plans. With respect
7 to individuals applying for enrollment on or after Janu-
8 ary 1, 1976, such standards and qualifications shall include—
9 "(1) education and training in actuarial mathe-
10 matics and methodology, as evidenced by—
11 "(A) a degree in actuarial mathematics or its
12 equivalent from an accredited college or university,
13 or
14 "(B) successful completion of an examination
15 in actuarial mathematics and methodology to be
16 given by the Secretary or his delegate, or
17 "(C) successful completion of other actuarial
18 examinations deemed adequate by the Secretary or
19 his delegate, and
20 "(2) an appropriate period of responsible actuarial
21 experience.
22 The Secretary or his delegate may, after notice and an
23 opportunity for a hearing, suspend or terminate the enroll-
24 ment of an individual under this section if the Secretary
25 or his delegate finds that such individual does not satisfy

1 the requirements for enrollment which were in effect at the
2 time of his application. For purposes of this title, the term
3 'enrolled actuary' means a person who is enrolled by the
4 Secretary or his delegate pursuant to this section. Regula-
5 tions prescribed for purposes of this section shall be effective
6 after December 31, 1975, only if approved by the Secretary
7 of Labor."

8 **SEC. 1034. EFFECTIVE DATES.**

9 This part shall take effect upon the date of the enact-
10 ment of this Act; except that—

11 (1) the requirements of section 6059 of the Internal
12 Revenue Code of 1954 shall apply only with respect
13 to plan years to which part I of this title applies,

14 (2) the requirements of section 6057 of such Code
15 shall apply only with respect to plan years beginning
16 after December 31, 1975, and

17 (3) the requirements of section 6058 of such Code
18 shall apply only with respect to plan years beginning
19 after the date of the enactment of this Act.

20 **PART IV—DECLARATORY JUDGMENTS RELATING**
21 **TO QUALIFICATION OF CERTAIN RETIRE-**
22 **MENT PLANS**

23 **SEC. 1041. TAX COURT PROCEDURE.**

24 (a) IN GENERAL.—Subchapter C of chapter 76 (re-

1 lating to the Tax Court) is amended by adding at the end
2 thereof the following new part:

3 "PART IV—DECLARATORY JUDGMENTS RELATING
4 TO QUALIFICATION OF CERTAIN RETIRE-
5 MENT PLANS

"Sec. 7476. Declaratory judgments.

6 "SEC. 7476. DECLARATORY JUDGMENTS.

7 "(a) CREATION OF REMEDY.—In a case of actual con-
8 troversy involving a determination by the Secretary or his
9 delegate with respect to the initial qualification or con-
10 tinuing qualification under subchapter D of chapter 1 of a
11 retirement plan, or involving a failure to make a determina-
12 tion with respect to such an issue, upon the filing of an
13 appropriate pleading, the United States Tax Court may
14 make a declaration with respect to such initial qualification
15 or continuing qualification. Any such declaration shall have
16 the force and effect of a decision of the Tax Court and shall
17 be reviewable as such.

18 "(b) LIMITATIONS.—

19 "(1) PETITIONER.—A pleading may be filed under
20 this section only by a petitioner who is the employer,
21 the plan administrator, or an employee who has quali-
22 fied under regulations prescribed by the Secretary or
23 his delegate as an interested party for purposes of

1 pursuing administrative remedies within the Internal
2 Revenue Service.
3 "(2) NOTICE.—For purposes of this section, the
4 filing of a pleading by any petitioner may be held by
5 the Tax Court to be premature, unless the petitioner
6 establishes to the satisfaction of the court that he has
7 complied with the requirements prescribed by regula-
8 tions of the Secretary or his delegate with respect to
9 notice to other interested parties that the proceeding is
10 being initiated.
11 "(3) EXHAUSTION OF ADMINISTRATIVE REME-
12 DIES.—The Tax Court shall not issue a declaratory judg-
13 ment or decree under this section in any proceeding
14 unless it determines that the petitioner has exhausted
15 administrative remedies available to him within the
16 Internal Revenue Service. A petitioner shall not be
17 deemed to have exhausted his administrative remedies
18 with respect to a failure by the Internal Revenue Serv-
19 ice to make a determination with respect to initial
20 qualification or continuing qualification of a retirement
21 plan before the expiration of 270 days after the request
22 for such determination was made.
23 (4) PLAN PUT INTO EFFECT.—No proceeding may
24 be maintained under this section unless the plan (and,

1 in the case of a controversy involving the continuing
2 qualification of the plan because of an amendment to the
3 plan, the amendment) with respect to which a decision
4 of the Tax Court is sought has been put into effect before
5 the filing of the pleading. A plan or amendment shall be
6 treated as in effect even though under the plan the funds
7 contributed to the plan may be refunded if the plan (or
8 the plan as so amended) is found to be not qualified.

9 "(5) TIME FOR BRINGING ACTION.—If the Secre-
10 tary or his delegate sends by certified or registered mail
11 his determination with respect to the qualification of the
12 plan to the person requesting such determination, no pro-
13 ceeding may be initiated under this section by any person
14 unless the pleading is filed before the 91st day after the
15 date such person is notified by the Internal Revenue
16 Service of such mailing.

17 "(c) COMMISSIONERS.—The chief judge of the Tax
18 Court may assign proceedings under this section to be heard
19 by the commissioners of the court, and the court may author-
20 ize a commissioner to enter the decision of the court with
21 respect to such proceeding, subject to such conditions and
22 review as the court may by rule provide.

23 "(d) RETIREMENT PLAN.—For purposes of this sec-
24 tion, the term 'retirement plan' means—

25 "(1) a pension, profit-sharing, or stock bonus plan

1 described in section 401 (a) or a trust which is part of
2 such a plan,
3 "(2) an annuity plan described in section 403 (a),
4 or
5 "(3) a bond purchase plan described in section
6 405 (a)."
7 (b) TECHNICAL AMENDMENTS.—
8 (1) FEE FOR FILING PETITION.—Section 7451
9 relating to fee for filing petition) is amended by strik-
10 ing out "deficiency" and inserting in lieu thereof "de-
11 ficiency or for a declaratory judgment under part IV
12 of this subchapter".
13 (2) DATE OF DECISION.—Section 7459 (c) (re-
14 lating to date of decision) is amended by inserting
15 before the period at the end of the first sentence the fol-
16 lowing: "or, in the case of a declaratory judgment pro-
17 ceeding under part IV of subchapter C, the date of
18 the court's order entering the decision".
19 (3) VENUE FOR APPEAL OF DECISION.—Section
20 7482 (b) (1) (relating to venue) is amended by add-
21 ing at the end thereof the following new sentence: "In
22 the case of a declaratory decision of the Tax Court,
23 the rules of this paragraph shall be applied with respect
24 to the employer who maintains the plan."
25 (c) CLERICAL AMENDMENT.—The table of parts for

1 subchapter C of chapter 76 is amended by adding at the end
2 thereof the following new item:

"PART IV. Declaratory judgments relating to qualification of certain retirement plans.".

3 (d) EFFECTIVE DATE.—The amendments made by this
4 section shall take effect on January 1, 1978.

5 PART V—INTERNAL REVENUE SERVICE

6 SEC. 1051. ESTABLISHMENT OF OFFICE.

7 (a) IN GENERAL.—Section 7802 (relating to Com-
8 missioner of Internal Revenue) is amended to read as
9 follows:

10 "SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; AS-
11 SISTANT COMMISSIONER (EMPLOYEE PLANS
12 AND EXEMPT ORGANIZATIONS).

13 "(a) COMMISSIONER OF INTERNAL REVENUE.—There
14 shall be in the Department of the Treasury a Commis-
15 sioner of Internal Revenue, who shall be appointed by the
16 President, by and with the advice and consent of the Senate.
17 The Commissioner of Internal Revenue shall have such
18 duties and powers as may be prescribed by the Secretary.

19 "(b) ASSISTANT COMMISSIONER FOR EMPLOYEE
20 PLANS AND EXEMPT ORGANIZATIONS.—There is estab-
21 lished within the Internal Revenue Service an office to be
22 known as the 'Office of Employee Plans and Exempt
23 Organizations' to be under the supervision and direction of
24 an Assistant Commissioner of Internal Revenue. As head

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1 of the Office, the Assistant Commissioner shall be respon-
2 sible for carrying out such functions as the Secretary or
3 his delegate may prescribe with respect to organizations
4 exempt from tax under section 501 (a) and with respect to
5 plans to which part I of subchapter D of chapter 1 applies
6 (and with respect to organizations designed to be exempt
7 under such section and plans designed to be plans to which
8 such part applies)."

9 (b) CLERICAL AMENDMENT.—The item relating to
10 section 7802 in the table of sections for subchapter A of
11 chapter 80 is amended to read as follows:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)."

12 (c) EFFECTIVE DATE.—The amendments made by this
13 section shall take effect on the 90th day after the date of the
14 enactment of this Act.

15 **SEC. 1052. AUTHORIZATION OF APPROPRIATIONS.**

16 There is authorized to be appropriated to the Depart-
17 ment of the Treasury for the purpose of carrying out all
18 functions of the Office of Employee Plans and Exempt
19 Organizations—

20 (1) for the fiscal year ending June 30, 1974,
21 $20,000,000, and

22 (2) for each fiscal year thereafter, $70,000,000.

1 **Subtitle B—Other Amendments to the**
2 **Internal Revenue Code Relating to**
3 **Retirement Plans**

4 SEC. 2001. CONTRIBUTIONS ON BEHALF OF SELF-EM-
5 PLOYED INDIVIDUALS AND SHAREHOLDER-
6 EMPLOYEES.

7 (a) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE
8 FOR SELF-EMPLOYED INDIVIDUALS.—

9 (1) Paragraph (1) of section 404(e) (relating to
10 special limitations for self-employed individuals) is
11 amended—

12 (A) by striking out "$2,500, or 10 percent"
13 and inserting in lieu thereof "$7,500, or 15 per-
14 cent", and

15 (B) by striking out "subject to the provisions
16 of paragraph (2)" and inserting in lieu thereof
17 "subject to paragraphs (2) and (4)".

18 (2) Paragraph (2)(A) of section 404(e) is
19 amended by striking out "shall not exceed $2,500, or 10
20 percent" and inserting in lieu thereof "shall (subject
21 to paragraph (4)) not exceed $7,500, or 15 percent".

22 (3) Section 404(e) is amended by adding at the
23 end thereof the following new paragraph:

24 "(4) LIMITATIONS CANNOT BE LOWER THAN
25 $750 OR 100 PERCENT OF EARNED INCOME.—The limi-

1 tations under paragraphs (1) and (2) (A) for any
2 employee shall not be less than the lesser of—
3 "(A) $750, or
4 "(B) 100 percent of the earned income derived
5 by such employee from the trades or businesses taken
6 into account for purposes of paragraph (1) or
7 (2) (A), as the case may be."
8 (b) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE
9 FOR SHAREHOLDER-EMPLOYEES.—Paragraph (1) of sec-
10 tion 1379 (b) (relating to taxability of shareholder-em-
11 ployees) is amended—
12 (1) by striking out "10 percent" in subparagraph
13 (A) and inserting in lieu thereof "15 percent", and
14 (2) by striking out "$2,500" in subparagraph (B)
15 and inserting in lieu thereof "$7,500".
16 (c) ONLY FIRST $100,000 OF ANNUAL COMPENSA-
17 TION TO BE TAKEN INTO ACCOUNT.—Subsection (a) of
18 section 401 (relating to requirements for qualification) is
19 amended by inserting after paragraph (16) the following
20 new paragraph:
21 "(17) In the case of a plan which provides con-
22 tributions or benefits for employees some or all of whom
23 are employees within the meaning of subsection (c) (1),
24 or are shareholder-employees within the meaning of sec-
25 tion 1379 (d), only if the basic or regular rate of annual

1 compensation of each employee taken into account under
2 the plan does not exceed the first $100,000 of such
3 compensation."
4 (d) DEFINED BENEFIT PLANS FOR SELF-EMPLOYED.—
5 (1) Subsection (a) of section 401 is amended by
6 inserting after paragraph (17) the following new para-
7 graph:
8 "(18) In the case of a trust which is part of a plan
9 providing a defined benefit for employees some or all
10 of whom are employees within the meaning of subsection
11 (c) (1), or are shareholder-employees within the mean-
12 ing of section 1379 (d), only if such plan satisfies the
13 requirements of subsection (j)."
14 (2) Section 401 (relating to qualified pension,
15 profit-sharing, and stock bonus plans) is amended by
16 redesignating subsection (j) as subsection (k) and by
17 inserting after subsection (i) the following new sub-
18 section:
19 "(j) DEFINED BENEFIT PLANS PROVIDING BENEFITS
20 FOR SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-
21 EMPLOYEES.—
22 "(1) IN GENERAL.—A defined benefit plan satis-
23 fies the requirements of this subsection only if the plan
24 provides that the basic benefit accruing for each plan
25 year of participation by an employee within the mean-

1 ing of subsection (c) (1) (or a shareholder-employee)
2 does not exceed the limitation on such accrual set forth
3 in regulations prescribed by the Secretary or his dele-
4 gate under this subsection to ensure that there will be
5 reasonable comparability (assuming level funding)
6 between the maximum retirement benefits which may
7 be provided with favorable tax treatment under this
8 title for such employees under—
9 "(A) defined contribution plans,
10 "(B) defined benefit plans, and
11 "(C) a combination of defined contribution
12 plans and defined benefit plans.
13 "(2) GUIDELINE REGULATIONS.—The regulations
14 prescribed under this subsection shall provide that a
15 plan does not satisfy the requirements of this subsection
16 if, under the plan, the basic benefit of any employee
17 within the meaning of subsection (c) (1) (or a share-
18 holder-employee) may exceed the sum of the products
19 for each plan year of participation of—
20 "(A) his annual compensation (not in excess
21 of $50,000) for such year, and
22 "(B) the applicable percentage determined
23 under paragraph (3).
24 "(3) APPLICABLE PERCENTAGE.—
25 "(A) TABLE.—For purposes of paragraph

1 (2), the applicable percentage for any individual
2 for any plan year shall be based on the percentage
3 shown on the following table opposite his age when
4 his current period of participation in the plan began:

"Age when participation began:	Applicable percentage
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

5 "(B) ADDITIONAL REQUIREMENTS.—The reg-
6 ulations prescribed under this subsection shall in-
7 clude provisions—
8 "(i) for applicable percentages for ages
9 between any two ages shown on the table,
10 "(ii) for adjusting the applicable percent-
11 ages in the case of plans providing benefits
12 other than a basic benefit,
13 "(iii) that any increase in the rate of ac-
14 crual, and any increase in the compensation
15 base which may be taken into account, shall,
16 with respect only to such increase, begin a new
17 period of participation in the plan, and
18 "(iv) when appropriate, in the case of
19 periods beginning after December 31, 1977, for
20 adjustments in the applicable percentages based
21 on changes in prevailing interest and mortality
22 rates occurring after 1973.

1 "(4) CERTAIN CONTRIBUTIONS AND BENEFITS
2 MAY NOT BE TAKEN INTO ACCOUNT.—A defined benefit
3 plan which provides contributions or benefits for owner-
4 employees shall not satisfy the requirements of this sub-
5 section unless such plan meets the requirements of sub-
6 section (a) (4) without taking into account contributions
7 or benefits under chapter 2 (relating to tax on self-
8 employment income), chapter 21 (relating to Federal
9 Insurance Contributions Act), title II of the Social
10 Security Act, or any other Federal or State law.
11 "(5) DEFINITIONS.—For purposes of this sub-
12 section—
13 "(A) BASIC BENEFIT.—The term 'basic bene-
14 fit' means a benefit in the form of a straight life
15 annuity commencing at the later of—
16 "(i) age 65, or
17 "(ii) the day 5 years after the day the
18 participant's current period of participation
19 began,
20 under a plan which provides no ancillary benefits
21 and to which employees do not contribute.
22 "(B) SHAREHOLDER-EMPLOYEE.—The term
23 'shareholder-employee' has the same meaning as
24 when used in section 1379 (d).

1 "(C) COMPENSATION.—The term 'compensa-
2 tion' means—
3 "(i) in the case of an employee within the
4 meaning of subsection (c)(1), the earned in-
5 come of such individual, or
6 "(ii) in the case of a shareholder-em-
7 ployee, the compensation received or accrued
8 by the individual from the electing small busi-
9 ness corporation.
10 "(6) SPECIAL RULES.—Section 404(e) (relating
11 to special limitations for self-employed individuals) shall
12 not apply to a trust to which this subsection applies."
13 (e) REPEAL OF EXISTING TAX TREATMENT OF EX-
14 CESS CONTRIBUTIONS.—
15 (1) The last sentence of section 401(d)(5) is
16 amended to read as follows: "Subparagraphs (A) and
17 (B) shall not apply to contributions described in sub-
18 section (e)."
19 (2) Paragraph (8) of section 401(d) is hereby
20 repealed.
21 (3) Subsection (e) of section 401 is amended to
22 read as follows:
23 "(e) CONTRIBUTIONS FOR PREMIUMS ON ANNUITY,
24 ETC., CONTRACTS.—A contribution by the employer on be-
25 half of an owner-employee is described in this subsection if—

1 "(1) under the plan such contribution is required
2 to be applied (directly or through a trustee) to pay
3 premiums or other consideration for one or more an-
4 nuity, endowment, or life insurance contracts on the life
5 of such owner-employee issued under the plan,
6 "(2) the amount of such contribution exceeds the
7 amount deductible under section 404 with respect to
8 contributions made by the employer on behalf of such
9 owner-employee under the plan, and
10 "(3) the amount of such contribution does not
11 exceed the average of the amounts which were deduct-
12 ible under section 404 with respect to contributions
13 made by the employer on behalf of such owner-employee
14 under the plan (or which would have been deductible if
15 such section had been in effect) for the first three taxable
16 years (A) preceding the year in which the last such
17 annuity, endowment, or life insurance contract was
18 issued under the plan, and (B) in which such owner-
19 employee derived earned income from the trade or busi-
20 ness with respect to which the plan is established, or
21 for so many of such taxable years as such owner-
22 employee was engaged in such trade or business and
23 derived earned income therefrom.
24 In the case of any individual on whose behalf contributions
25 described in paragraph (1) are made under more than one

1 plan as an owner-employee during any taxable year, the
2 preceding sentence shall not apply if the amount of such
3 contributions under all such plans for all such years exceeds
4 $7,500. Any contribution which is not considered to be an
5 excess contribution by reason of the application of this sub-
6 section shall, for purposes of section 4972 (b), be taken
7 into account as a contribution made by such owner-employee
8 as an employee to the extent that the amount of such con-
9 tribution is not deductible under section 404 for the taxable
10 year."

11 (4) Clause (ii) of section 401 (a) (10) (A) is
12 amended by striking out "subsection (e) (3) (A)" and
13 inserting in lieu thereof "subsection (e)".

14 (5) Subparagraph (A) of section 72 (m) (5) is
15 amended—

16 (A) by inserting "and" at the end of clause
17 (i),

18 (B) by striking out the comma at the end of
19 clause (ii) and inserting in lieu thereof a period,
20 and

21 (C) by striking out clause (iii).

22 (f) TAX ON EXCESS CONTRIBUTIONS.—

23 (1) Chapter 43 (relating to qualified pension, etc.,
24 plans) is amended by inserting after section 4971 the
25 following new section:

1 "SEC. 4972. TAX ON EXCESS CONTRIBUTIONS FOR SELF-
2 EMPLOYED INDIVIDUALS.
3 "(a) TAX IMPOSED.—In the case of a plan which pro-
4 vides contributions or benefits for employees some or all of
5 whom are employees within the meaning of section 401
6 (c) (1), there is hereby imposed, for each taxable year of
7 the employer who maintains such plan, a tax in an amount
8 equal to 6 percent of the amount of the excess contributions
9 under the plan (determined as of the close of the taxable
10 year). The tax imposed by this subsection shall be paid
11 by the employer who maintains the plan.
12 "(b) EXCESS CONTRIBUTIONS.—
13 "(1) IN GENERAL.—For purposes of this section,
14 the term 'excess contributions' means the sum of the
15 amounts (if any) determined under paragraphs (2),
16 (3), and (4). For purposes of this subsection, the
17 amount of any contribution which is allocable (deter-
18 mined under regulations prescribed by the Secretary or
19 his delegate) to the purchase of life, accident, health,
20 or other insurance shall not be taken into account.
21 "(2) CONTRIBUTIONS BY OWNER-EMPLOYEES.—
22 In the case of a plan which provides contributions or
23 benefits for employees some or all of whom are owner-

1 employees (within the meaning of section 401 (c)
2 (3)), the sum of—
3 "(A) the excess (if any) of—
4 "(i) the amount contributed under the
5 plan by each owner-employee (as an em-
6 ployee) for the taxable year, over
7 "(ii) the amount permitted to be contrib-
8 uted by each owner-employee (as an em-
9 ployee) for such year, and
10 "(B) the amount determined under this para-
11 graph for the preceding taxable year of the
12 employer,
13 reduced by the excess (if any) of the amount described
14 in subparagraph (A) (ii) over the amount described in
15 subparagraph (A) (i).
16 "(3) DEFINED BENEFIT PLANS.—In the case of a
17 defined benefit plan, any amount contributed under the
18 plan by the employer during the taxable year or any
19 prior taxable year beginning after December 31, 1975,
20 if—
21 "(A) as of the close of the taxable year, the
22 full funding limitation of the plan (determined
23 under section 412 (c) (7)) is zero, and
24 "(B) such amount has not been deductible for
25 the taxable year or any prior taxable year.

1 "(4) DEFINED CONTRIBUTION PLANS.—In the
2 case of a plan other than a defined benefit plan, the
3 portion of the amounts contributed under the plan by
4 the employer during the taxable year and each prior
5 taxable year beginning after December 31, 1975, which
6 has not been deductible for the taxable year or any prior
7 taxable year.

8 "(c) AMOUNT PERMITTED TO BE CONTRIBUTED BY
9 OWNER-EMPLOYEE.—For purposes of subsection (b) (2),
10 the amount permitted to be contributed under a plan by an
11 owner-employee (as an employee) for any taxable year is
12 the smallest of the following:

13 "(1) $2,500,

14 "(2) 10 percent of the earned income for such
15 taxable year derived by such owner-employee from the
16 trade or business with respect to which the plan is
17 established, or

18 "(3) the amount of the contribution which would
19 be contributed by the owner-employee (as an employee)
20 if such contribution were made at the rate of contri-
21 butions permitted to be made by employees other than
22 owner-employees.

23 In any case in which there are no employees other than
24 owner-employees, the amount determined under the pre-
25 ceding sentence shall be zero.

1 "(d) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section, see section 275."

2 (2) CLERICAL AMENDMENT.—The table of sections
3 for chapter 43 is amended by inserting after the item
4 relating to section 4971 the following new item:

"Sec. 4972. Tax on excess contributions for self-employed individuals.".

5 (g) PREMATURE DISTRIBUTIONS TO OWNER-EM-
6 PLOYEES.—

7 (1) IN GENERAL.—Subparagraph (B) of section
8 72 (m) (5) (relating to penalties applicable to certain
9 amounts received by owner-employees) is amended to
10 read as follows:

11 "(B) If a person receives an amount to which
12 this paragraph applies, his tax under this chapter
13 for the taxable year in which such amount is re-
14 ceived shall be increased by an amount equal to 10
15 percent of the portion of the amount so received
16 which is includible in his gross income for such tax-
17 able year."

18 (2) CONFORMING AMENDMENTS.—

19 (A) Subparagraphs (C), (D), and (E) of
20 section 72 (m) (5) are hereby repealed.

21 (B) The second sentence of section 46 (a) (3)
22 and the second sentence of section 50A (a) (3) are

each amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),".

(C) The third sentence of section 901(a) is amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),".

(D) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by striking out "402(e)" and inserting in lieu thereof "72(m)(5)(B), 402(e)".

(E) Section 404(a)(2) is amended by striking out "(16)" and inserting in lieu thereof "(16), (17), (18)".

(h) Effective Dates.—

(1) The amendments made by subsections (a), (b), and (c) shall apply to taxable years beginning after December 31, 1973.

(2) The amendments made by subsections (d), (e), (f), and (g) shall apply to taxable years beginning after December 31, 1975.

1 SEC. 2002. DEDUCTION FOR RETIREMENT SAVINGS.

2 (a) ALLOWANCE OF DEDUCTION.—

3 (1) IN GENERAL.—Part VII of subchapter B of
4 chapter 1 (relating to additional itemized deductions for
5 individuals) is amended by redesignating section 219 as
6 220 and by inserting after section 218 the following new
7 section:

8 "SEC. 219. RETIREMENT SAVINGS.

9 "(a) DEDUCTION ALLOWED.—In the case of an indi-
10 vidual, there shall be allowed as a deduction amounts paid
11 in cash during the taxable year by or on behalf of such
12 individual for his benefit—

13 "(1) to an individual retirement account described
14 in section 408(a),

15 "(2) for an individual retirement annuity described
16 in section 408(b), or

17 "(3) for a retirement bond described in section 409
18 (but only if the bond is not redeemed within 12 months
19 of the date of its issuance).

20 For purposes of this title, any amount paid by an employer
21 to such a retirement account or for such a retirement annuity
22 or bond shall constitute payment of compensation to the
23 employee (other than a self-employed individual who is an
24 employee within the meaning of section 401(c)(1)) includ-
25 ible in his gross income, whether or not a deduction for such

1 payment is allowable under this section to the employee after
2 the application of subsection (b).
3 "(b) LIMITATIONS AND RESTRICTIONS.—
4 "(1) MAXIMUM DEDUCTION.—The amount allow-
5 able as a deduction under subsection (a) to an individ-
6 ual for any taxable year shall not exceed an amount
7 equal to 20 percent of the compensation includible in
8 his gross income for such taxable year, or $1,500, which-
9 ever is the lesser.
10 "(2) COVERED BY CERTAIN OTHER PLANS.—No
11 deduction shall be allowed under subsection (a) for an
12 individual for the taxable year if for any part of such
13 year—
14 "(A) he was an active participant in—
15 "(i) a plan described in section 401 (a)
16 which includes a trust exempt from tax under
17 section 501 (a),
18 "(ii) an annuity plan described in sec-
19 tion 403 (a),
20 "(iii) a qualified bond purchase plan de-
21 scribed in section 405 (a), or
22 "(iv) a plan established for its employees
23 by the United States, by a State or political
24 division thereof, or by an agency or instrumen-
25 tality of any of the foregoing, or

1 "(B) amounts were contributed by his em-
2 ployer for an annuity contract described in section
3 403 (b) (whether or not his rights in such contract
4 are nonforfeitable).
5 "(3) CONTRIBUTIONS AFTER AGE 70½.—No de-
6 duction shall be allowed under subsection (a) with
7 respect to any payment described in subsection (a)
8 which is made during the taxable year of an individual
9 who has attained age 70½ before the close of such tax-
10 able year.
11 "(4) RECONTRIBUTED AMOUNTS.—No deduction
12 shall be allowed under this section with respect to a
13 rollover contribution described in section 402 (a) (5),
14 403 (a) (4), or 408 (d) (3).
15 "(c) DEFINITIONS AND SPECIAL RULES.—
16 "(1) COMPENSATION.—For purposes of this sec-
17 tion, the term 'compensation' includes earned income
18 as defined in section 401 (c) (2).
19 "(2) MARRIED INDIVIDUALS.—The maximum de-
20 duction under subsection (b) (1) shall be computed
21 separately for each individual, and this section shall be
22 applied without regard to the community property laws
23 of a State."

1 (2) DEDUCTION ALLOWED IN ARRIVING AT AD-
2 JUSTED GROSS INCOME.—Section 62 (defining adjusted
3 gross income) is amended by inserting after paragraph
4 (9) the following new paragraph:
5 "(10) RETIREMENT SAVINGS.—The deduction al-
6 lowed by section 219 (relating to deduction of certain
7 retirement savings)."
8 (b) INDIVIDUAL RETIREMENT ACCOUNTS.—Subpart
9 A of part I of subchapter D of chapter 1 (relating to re-
10 tirement plans) is amended by adding at the end thereof
11 the following new section:
12 "SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.
13 "(a) INDIVIDUAL RETIREMENT ACCOUNT.—For pur-
14 poses of this section, the term 'individual retirement account'
15 means a trust created or organized in the United States for
16 the exclusive benefit of an individual or his beneficiaries, but
17 only if the written governing instrument creating the trust
18 meets the following requirements:
19 "(1) Except in the case of a rollover contribution
20 described in subsection (d) (3) or in section 402 (a) (5)
21 or 403 (a) (4), contributions will not be accepted for the
22 taxable year in excess of $1,500 on behalf of any indi-
23 vidual.
24 "(2) The trustee is a bank (as defined in section
25 401 (d) (1)) or such other person who demonstrates to

1 the satisfaction of the Secretary or his delegate that the
2 manner in which such other person will adminster the
3 trust will be consistent with the requirements of this
4 section.

5 "(3) No part of the trust funds will be invested in
6 life insurance contracts.

7 "(4) The interest of an individual in the balance
8 in his account will be nonforfeitable.

9 "(5) The assets of the trust will not be commingled
10 with other property except in a common trust fund.

11 "(6) The entire interest of an individual for whose
12 benefit the trust is maintained will be distributed to him
13 not later than the close of his taxable year in which he
14 attains age 70½, or will be distributed, commencing
15 before the close of such taxable year, in accordance
16 with regulations prescribed by the Secretary or his
17 delegate, over—

18 "(A) the life of such individual or the lives of
19 such individual and his spouse, or

20 "(B) a period not extending beyond the life
21 expectancy of such individual or the life expectancy
22 of such individual and his spouse.

23 "(7) If an individual for whose benefit the trust
24 is maintained dies before his entire interest has been dis-
25 tributed to him, or if distribution has been commenced

1 as provided in paragraph (6) to his surviving spouse
2 and such surviving spouse dies before the entire interest
3 has been distributed to such spouse, the entire interest
4 (or the remaining part of such interest if distribution
5 thereof has commenced) will, within 5 years after his
6 death (or the death of the surviving spouse) be distrib-
7 uted, or applied to the purchase of an immediate annuity
8 for his beneficiary or beneficiaries (or the beneficiary or
9 beneficiaries of his surviving spouse) which will be pay-
10 able for the life of such beneficiary or beneficiaries (or
11 for a term certain not extending beyond the life expect-
12 ancy of such beneficiary or beneficiaries) and which an-
13 nuity will be immediately distributed to such beneficiary
14 or beneficiaries. The preceding sentence shall have no
15 application if distributions over a term certain com-
16 menced before the death of the individual for whose
17 benefit the trust was maintained and the term certain
18 is for a period permitted under paragraph (6).
19 "(b) INDIVIDUAL RETIREMENT ANNUITY.—For pur-
20 poses of this section, the term 'individual retirement annuity'
21 means an annuity contract issued by an insurance company
22 which meets the following requirements:
23 "(1) The contract is not transferable by the owner.
24 "(2) The annual premium under the contract will
25 not exceed $1,500, and any refund of premiums will be

1 applied before the close of the calendar year following
2 the year of the refund toward the payment of future pre-
3 miums or the purchase of additional benefits.
4 "(3) The entire interest of the owner will be dis-
5 tributed to him not later than the close of his taxable
6 year in which he attains age 70½, or will be distrib-
7 uted, in accordance with regulations prescribed by the
8 Secretary or his delegate, over—
9 "(A) the life of such owner or the lives of such
10 owner and his spouse, or
11 "(B) a period not extending beyond the life
12 expectancy of such owner or the life expectancy of
13 such owner and his spouse.
14 "(4) If the owner dies before his entire interest has
15 been distributed to him, or if distribution has been com-
16 menced as provided in paragraph (3) to his surviving
17 spouse and such surviving spouse dies before the entire
18 interest has been distributed to such spouse, the entire
19 interest (or the remaining part of such interest if distribu-
20 tion thereof has commenced) will, within 5 years after
21 his death (or the death of the surviving spouse) be dis-
22 tributed, or applied to the purchase of an immediate
23 annuity for his beneficiary or beneficiaries (or the bene-
24 ficiary or beneficiaries of his surviving spouse) which
25 will be payable for the life of such beneficiary or benefi-

1 ciaries (or for a term certain not extending beyond the
2 life expectancy of such beneficiary or beneficiaries) and
3 which annuity will be immediately distributed to such
4 beneficiary or beneficiaries. The preceding sentence
5 shall have no application if distributions over a term
6 certain commenced before the death of the owner and
7 the term certain is for a period permitted under para-
8 graph (3).
9 "(5) The entire interest of the owner is nonforfeit-
10 able.
11 Such term does not include such an annuity contract for any
12 taxable year of the owner in which it is disqualified on the
13 application of subsection (e) or for any subsequent taxable
14 year.
15 "(c) ACCOUNTS ESTABLISHED BY EMPLOYERS AND
16 CERTAIN ASSOCIATIONS OF EMPLOYEES.—A trust created
17 or organized in the United States by an employer for the
18 exclusive benefit of his employees or their beneficiaries, or by
19 an association of employees (which may include employees
20 within the meaning of section 401 (c) (1)) for the exclusive
21 benefit of its members or their beneficiaries, shall be treated
22 as an individual retirement account (described in subsection
23 (a)), but only if the written governing instrument creating
24 the trust meets the following requirements:

1 "(1) The trust satisfies the requirements of para-
2 graphs (1) through (7) of subsection (a).
3 "(2) There is a separate accounting for the interest
4 of each employee or member.
5 The assets of the trust may be held in a common fund for the
6 account of all individuals who have an interest in the trust.
7 "(d) TAX TREATMENT OF DISTRIBUTIONS.—
8 "(1) IN GENERAL.—Except as otherwise provided
9 in this subsection, any amount paid or distributed out of
10 an individual retirement account or under an individual
11 retirement annuity, shall be included in gross income by
12 the payee for the taxable year in which the payment or
13 distribution is received. The basis of any person in such
14 an account or annuity shall be zero.
15 "(2) DISTRIBUTIONS OF ANNUITY CONTRACTS.—
16 Paragraph (1) shall not apply to any annuity contract
17 which meets the requirements of paragraphs (1), (3),
18 (4), and (5) of subsection (b) and which is distributed
19 from an individual retirement account. Section 72 shall
20 apply to any such annuity contract, and for purposes of
21 section 72 the investment in such contract shall be zero.
22 "(3) ROLLOVER CONTRIBUTION.—An amount is
23 described in this paragraph as a rollover contribution
24 if it meets the requirements of subparagraphs (A) and
25 (B).

1 "(A) IN GENERAL.—Paragraph (1) shall not
2 apply to any amount paid or distributed out of an
3 individual retirement account or individual retire-
4 ment annuity to an individual if—
5 "(i) such individual is a person for whose
6 benefit the account is maintained, and
7 "(ii) the entire amount received (includ-
8 ing any property other than money) is paid
9 into an individual retirement account or individ-
10 ual retirement annuity (created for such indi-
11 vidual's benefit) not later than the 60th day
12 after the day on which he receives the payment
13 or distribution.
14 "(B) LIMITATION.—This subsection shall not
15 apply to any amount received by an individual from
16 an individual retirement account or individual re-
17 tirement annuity if at any time during the 3-year
18 period ending on the day of such receipt such in-
19 dividual received any other amount from an individ-
20 ual retirement account or individual retirement
21 annuity which was not includible in his gross income
22 because of the application of this paragraph.
23 "(4) EXCESS CONTRIBUTIONS RETURNED BEFORE
24 DUE DATE OF RETURN.—Paragraph (1) shall not apply
25 to the distribution of any contribution paid during a

1 taxable year to an individual retirement account or for
2 an individual retirement annuity to the extent that such
3 contribution exceeds the amount allowable as a deduc-
4 tion under section 219 if—

5 "(A) such distribution is received on or before
6 the day prescribed by law (including extensions)
7 for filing such individual's return for such taxable
8 year,

9 "(B) no deduction is allowed under section
10 219 with respect to such excess contribution, and

11 "(C) such distribution is accompanied by the
12 amount of net income attributable to such excess
13 contribution.

14 Any net income described in subparagraph (C) shall
15 be included in the gross income of the individual for
16 the taxable year in which received.

17 "(e) TAX TREATMENT OF ACCOUNTS AND ANNUI-
18 TIES.—

19 "(1) EXEMPTION FROM TAX.—Any individual re-
20 tirement account shall be exempt from taxation under
21 this subtitle unless such account has ceased to be an
22 individual retirement account by reason of paragraph
23 (2). Notwithstanding the preceding sentence, any such
24 account shall be subject to the taxes imposed by sec-

1 tion 511 (relating to imposition of tax on unrelated
2 business income of charitable, etc., organizations).
3 "(2) LOSS OF EXEMPTION OF ACCOUNT WHERE
4 EMPLOYEE ENGAGES IN PROHIBITED TRANSACTION.—
5 "(A) IN GENERAL.—If during any taxable
6 year of the individual for whose benefit any indi-
7 vidual reitrement account was established there is
8 any transaction described in subsection (b) or
9 (g) of section 503, such account shall cease to be
10 an individual retirement account as of the first
11 day of such taxable year. For purposes of this
12 paragraph—
13 "(i) the individual for whose benefit any
14 account was established shall be treated as the
15 creator of such account, and
16 "(ii) the separate account for any in-
17 dividual within an individual retirement ac-
18 count maintained by an employer or associa-
19 tion of employees shall be treated as a sep-
20 arate individual retirement account.
21 "(B) ACCOUNT TREATED AS DISTRIBUTING
22 ALL ITS ASSETS.—In any case in which any ac-
23 count ceases to be an individual retirement ac-
24 count by reason of subparagraph (A) as of the

first day of any taxable year, paragraph (1) of subsection (d) shall apply as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

"(3) EFFECT OF BORROWING ON ANNUITY CONTRACT.—If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract shall cease to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

"(4) LOSS OF EMPLOYER DEDUCTIONS WHERE EMPLOYER ENGAGES IN PROHIBITED TRANSACTION.—If during any taxable year of an employer there is any transaction described in subsection (b) or (g) of section 503 with respect to any individual retirement account maintained by such employer, all deductions of such employer for compensation paid or accrued for such taxable year and for all prior taxable years shall be disallowed to the extent of contributions to such individual retirement account paid during such year. For purposes of this paragraph, the employer shall be

1 treated as the creator of each individual retirement
2 account maintained by him.
3 "(f) PENALTY TAX ON CERTAIN AMOUNTS INCLUDED
4 IN GROSS INCOME BEFORE AGE 59½.—
5 "(1) EARLY DISTRIBUTIONS FROM AN INDIVIDUAL
6 RETIREMENT ACCOUNT, ETC.—If a distribution from an
7 individual retirement account or under an individual re-
8 tirement annuity to the individual for whose benefit such
9 account or annuity was established is made before such
10 individual attains age 59½, his tax under this chapter
11 for the taxable year in which such distribution is re-
12 ceived shall be increased by an amount equal to 10 per-
13 cent of the amount of the distribution which is includible
14 in his gross income for such taxable year.
15 "(2) DISQUALIFICATION CASES.—If an amount
16 is includible in gross income for a taxable year under
17 subsection (c) and the taxpayer has not attained age
18 59½ before the beginning of such taxable year, his tax
19 under this chapter for such taxable year shall be in-
20 creased by an amount equal to 10 percent of such amount
21 so required to be included in his gross income.
22 "(3) DISABILITY CASES.—Paragraphs (1) and
23 (2) shall not apply if the amount paid or distributed,
24 or the disqualification of the account or annuity under

1 subsection (e), is attributable to the taxpayer becoming
2 disabled within the meaning of section 72 (m) (7).
3 "(g) COMMUNITY PROPERTY LAWS.—This section
4 shall be applied without regard to the community property
5 laws of any State.
6 "(h) CUSTODIAL ACCOUNTS.—For purposes of this
7 section, a custodial account shall be treated as a trust if the
8 assets of such account are held by a bank (as defined in sec-
9 tion 401 (d) (1) or another person who demonstrates, to the
10 satisfaction of the Secretary or his delegate, that the man-
11 ner in which he will hold the assets will be consistent with
12 the requirements of this section. For purposes of this title,
13 in the case of a custodial account treated as a trust by rea-
14 son of the preceding sentence, the custodian of such account
15 shall be treated as the trustee thereof.
16 "(i) REPORTS.—The trustee of an individual retire-
17 ment account or the issuer of an individual retirement an-
18 nuity shall submit to the Secretary or his delegate such
19 reports regarding contributions to such account or annuity
20 distributions from such account or annuity, and other matters
21 relating to such account or annuity as may be required by
22 regulations prescribed by the Secretary or his delegate
23 Such reports shall be filed at such time and in such manner
24 as may be required by such regulations.
25 "(j) CROSS REFERENCES.—

"(1) For tax on excess contributions to individual retirement accounts or annuities, see section 4973.

"(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974."

1 (c) RETIREMENT BONDS.—Subpart A of part I of sub-
2 chapter D of chapter 1 (relating to retirement plans) is
3 amended by inserting after section 408 the following new
4 section:

5 "SEC. 409. RETIREMENT BONDS.

6 "(a) RETIREMENT BOND.—For purposes of this section
7 and section 219 (a), the term 'retirement bond' means a bond
8 issued under the Second Liberty Bond Act, as amended,
9 which by its terms, or by regulations prescribed by the
10 Secretary under such Act—

11 "(1) provides for payment of interest, or invest-
12 ment yield, only on redemption;

13 "(2) provides that no interest, or investment yield,
14 is payable if the bond is redeemed within 12 months
15 after the date of its issuance;

16 "(3) provides that it ceases to bear interest, or
17 provide investment yield, on the earlier of—

18 "(A) the date on which the individual in
19 whose name it is purchased (hereinafter in this sec-
20 tion referred to as the 'registered owner') attains
21 age 70½; or

22 "(B) 5 years after the date on which the
23 registered owner dies, but not later than the date on

which he would have attained the age 70½ had he lived;

"(4) may be redeemed before the death of the registered owner only if such owner—

"(A) has attained age 59½,

"(B) has become disabled (within the meaning of section 72 (m) (7)), or

"(C) tenders the bond for redemption within 12 months after the date of its issuance; and

"(5) is not transferable.

"(b) INCOME TAX TREATMENT OF BONDS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, on the redemption of a retirement bond the entire proceeds shall be included in the gross income of the taxpayer entitled to the proceeds on redemption. If the registered owner has not tendered it for redemption before the close of the taxable year in which he attains age 70½, such individual shall include in his gross income for such taxable year the amount of proceeds he would have received if the bond had been redeemed at age 70½. The provisions of section 72 (relating to annuities) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply to a retirement bond.

"(2) BASIS.—The basis of a retirement bond shall

be zero, whether or not the registered owner was allowed a deduction under section 219 for the amount paid for the bond.

"(3) EXCEPTIONS.—

"(A) REDEMPTION WITHIN 12 MONTHS.—If a retirement bond is redeemed within 12 months after the date of its issuance, the proceeds shall be excluded from gross income if no deduction is allowed under section 219 on account of the purchase of such bond.

"(B) REDEMPTION AFTER AGE 70½.—If a retirement bond is redeemed after the close of the taxable year in which the registered owner attains age 70½, there shall be included in gross income on the redemption of the bond only the amount by which the proceeds on redemption exceed the amount included in his gross income for such taxable year."

(d) EXCISE TAX ON EXCESS CONTRIBUTIONS.—Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4972 the following new section:

"SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) TAX IMPOSED.—In the case of—

1 "(1) any individual retirement account (within the
2 meaning of section 408 (a)), or
3 "(2) any individual retirement annuity (within
4 the meaning of section 408 (b)),
5 established for the benefit of any individual, there is hereby
6 imposed for each taxable year a tax in an amount equal to
7 6 percent of the amount of the excess contributions to such
8 individual's accounts or annuities (determined as of the close
9 of the taxable year). The tax imposed by this subsection
10 shall be paid by such individual.
11 "(b) EXCESS CONTRIBUTIONS.—For purposes of this
12 subsection, in the case of individual retirement accounts or
13 individual retirement annuities, the term 'excess contribu-
14 tions' means the sum of—
15 "(1) the excess (if any) of—
16 "(A) the amount contributed for the taxable
17 year to the accounts or for the annuities (other than
18 a rollover contribution described in section 402 (a)
19 (5), 403 (a) (4), or 408 (d) (3)), over
20 "(B) the amount allowable as a deduction
21 under section 219 for such contributions, and
22 "(2) the amount determined under this paragraph
23 for the preceding taxable year, reduced by the excess (if
24 any) of the maximum amount allowable as a deduction
25 under section 219 for the taxable year over the amount

1 contributed to the accounts or for the annuities for the
2 taxable year and reduced by the sum of the distributions
3 out of the account (for the taxable year and all prior
4 taxable years) which were included in the gross income
5 of the payee under section 408 (d) (1). For purposes of
6 this paragraph, any contribution which is distributed out
7 of the individual retirement account or individual retire-
8 ment annuity in a distribution to which section 408 (d)
9 (4) applies shall be treated as an amount not con-
10 tributed."

11 (e) EXCISE TAX ON EXCESSIVE ACCUMULATIONS.—
12 Chapter 43 is amended by inserting after section 4973 the
13 following new section:

14 "SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN
15 INDIVIDUAL RETIREMENT ACCOUNTS OR AN-
16 NUITIES.

17 "(a) IMPOSITION OF TAX.—If, in the case of an in-
18 dividual retirement account or individual retirement an-
19 nuity, the amount distributed during the taxable year of
20 the payee is less than the minimum amount required to be
21 distributed under section 408 (a) (6) or (7), or 408 (b)
22 (3) or (4) during such year, there is hereby imposed
23 a tax equal to 50 percent of the amount by which the mini-
24 mum amount required to be distributed during such year

1 exceeds the amount actually distributed during the year. The
2 tax imposed by this section shall be paid by such payee.
3 "(b) REGULATIONS.—For purposes of this section, the
4 minimum amount required to be distributed during a taxable
5 year under section 408(a) (6) or (7), or 408(b) (3)
6 or (4) shall be determined under regulations prescribed by
7 the Secretary or his delegate."
8 (f) PENALTY FOR FAILURE TO PROVIDE REPORTS ON
9 INDIVIDUAL RETIREMENT ACCOUNTS.—Subchapter B of
10 chapter 68 (relating to assessable penalties) is amended by
11 adding at the end thereof the following new section:
12 "SEC. 6693. FAILURE TO PROVIDE REPORTS ON INDIVID-
13 UAL RETIREMENT ACCOUNTS OR ANNU-
14 ITIES.
15 "(a) The person required by section 408(i) to file a
16 report regarding an individual retirement account or in-
17 dividual retirement annuity at the time and in the manner re-
18 quired by section 408(i) shall pay a penalty of $10 for each
19 failure unless it is shown that such failure is due to reason-
20 able cause.
21 "(b) DEFICIENCY PROCEDURES NOT TO APPLY.—
22 Subchapter B of chapter 63 (relating to deficiency proce-
23 dures for income, estate, gift, and certain excise taxes) shall
24 not apply to the assessment or collection of any penalty
25 imposed by subsection (a)."

1 (g) CONFORMING AMENDMENTS.—

2 (1) Section 37(c)(1) (defining retirement in-
3 come) is amended—

4 (A) by adding at the end of subparagraph
5 (E) the following: "retirement bonds described in
6 section 409, or".

7 (B) by adding the following new subpara-
8 graph:

9 "(F) an individual retirement account de-
10 scribed in section 408(a) or an individual retire-
11 ment annuity described in section 408(b), or".

12 (2) The second sentence of section 46(a)(3)
13 and the second sentence of section 50A(a)(3) are each
14 amended by striking out "tax preferences)," and in-
15 serting in lieu thereof "tax preferences), section 408
16 (e) (relating to additional tax on income from certain
17 retirement accounts),".

18 (3) The third sentence of section 901(a) is
19 amended by striking out "tax preferences)," and insert-
20 ing in lieu thereof "tax preferences), against the tax im-
21 posed for the taxable year by section 408(e) (relating
22 to additional tax on income from certain retirement
23 accounts),".

24 (4) Subparagraph (A) of section 56(a)(2) and
25 paragraph (1) of section 56(c) are each amended by

1 striking out "531" and inserting in lieu thereof "408 (f),
2 531,".
3 (5) Section 402 (a) (relating to taxability of bene-
4 ficiaries of exempt trust) is amended by inserting after
5 paragraph (4) the following new paragraph:
6 "(5) TRANSFER TO INDIVIDUAL RETIREMENT
7 ACCOUNT.—In the case of an employees' trust described
8 in section 401 (a) which is exempt from tax under
9 section 501 (a), if—
10 "(A) the balance to the credit of an employee
11 is paid to him in one or more distributions within
12 1 taxable year of the employee on account of his
13 separation from the service,
14 "(B) the employee transfers all the property he
15 receives in such distributions to an individual retire-
16 ment account described in section 408 (a) or to an
17 individual retirement annuity described in section
18 408 (b) on or before the 60th day after the day on
19 which he received such property, to the extent the
20 fair market value of such property exceeds the
21 amount referred to in subsection (e) (1) (D) (i),
22 and
23 "(C) the amount so transferred consists of the
24 property (other than money) distributed, to the ex-
25 tent that the fair market value of such property does

1 not exceed the amount required to be transferred
2 pursuant to subparagraph (B),
3 then such distributions shall not be includible in gross
4 income for the year in which paid. Such transfer shall be
5 treated as a rollover contribution as described in section
6 408(d)(3)."
7 (6) Section 403(a) (relating to taxation of em-
8 ployee annuities) is amended by adding after paragraph
9 (3) the following new paragraph:
10 "(4) TRANSFER TO INDIVIDUAL RETIREMENT
11 ACCOUNT.—In the case of an employees' trust described
12 in section 401(a) which is exempt from tax under sec-
13 tion 501(a), if—
14 "(A) the balance to the credit of an employee
15 is paid to him in one or more distributions within
16 1 taxable year of the employee on account of his
17 separation from the service,
18 "(B) the employee transfers all the property
19 he receives in such distributions to an individual
20 account described in section 408(a) or to an indi-
21 vidual retirement annuity described in section
22 408(b) on or before the 60th day after the day
23 on which he received such property to the extent
24 the fair market value of such property exceeds the

1 amount referred to in subsection (e) (4) (D) (i),
2 and
3 "(C) the amount so transferred consists of
4 the property distributed, to the extent that the fair
5 market value of such property does not exceed the
6 amount required to be transferred pursuant to sub-
7 paragraph (B),
8 then such transfer shall be treated as a rollover con-
9 tribution (within the meaning of section 408(d) (3),
10 and such distributions shall not be includible in gross
11 income for the year in which paid."
12 (7) Section 3401(a) (12) (relating to exemption
13 from collection of income tax at source on certain wages)
14 is amended by adding at the end thereof the following
15 new subparagraph:
16 "(D) for a payment described in section 219
17 (a) if, at the time of such payment, it is reasonable
18 to believe that the employee will be entitled to a
19 deduction under such section for such payment; or".
20 (8) Section 6047 (relating to information relating
21 to certain trusts and annuity and bond purchase plans)
22 is amended by redesignating subsection (d) as subsec-
23 tion (e) and by inserting after subsection (c) the fol-
24 lowing new subsection:

1 "(d) OTHER PROGRAMS.—To the extent provided by
2 regulations prescribed by the Secretary or his delegate, the
3 provisions of this section shall be applicable with respect
4 to any payment described in section 219 (a) and to transac-
5 tions of any trust described in section 408 (a) or under an
6 individual retirement annuity described in section 408 (b)."
7 (9) PENSION PLAN RESERVES.—Section 805 (d)
8 (1) (relating to definition of pension plan reserves) is
9 amended by striking out "or" at the end of subpara-
10 graph (C), by striking out "foregoing." at the end of
11 subparagraph (D) and inserting in lieu thereof "fore-
12 going; or", and by adding at the end thereof the follow-
13 ing new subparagraph:
14 "(E) purchased under contracts entered into
15 with trusts which (as of the time the contracts were
16 entered into) were deemed to be individual retire-
17 ment accounts described in section 408 (a) or under
18 contracts entered into with individual retirement an-
19 nuities described in section 408 (b)."
20 (10) TREATMENT OF DISTRIBUTION FROM IN-
21 DIVIDUAL RETIREMENT ACCOUNTS.—Section 72 (re-
22 lating to annuities) is amended—
23 (A) by inserting after "501 (a)" in sub-
24 section (m) (4) (A) ", an individual retirement

1 account described in section 408 (a), an individual
2 retirement annuity described in section 408 (b)".
3 (B) by striking out at the end of subsection
4 (m) (6) "401 (c) (3)" and inserting in lieu thereof
5 "401 (c) (3) and includes an individual for whose
6 benefit an individual retirement account or annuity
7 described in section 408 (a) or (b) is maintained".
8 (11) BASIS FOR ASSETS HELD FOR CERTAIN CON-
9 TRACTS.—Section 801 (g) (7) (relating to basis of
10 assets held for qualified pension plan contracts) is
11 amended by striking out "or (D)" and inserting in
12 lieu thereof "(D), or (E)".
13 (h) CLERICAL AMENDMENTS.—
14 (1) The table of sections for part VII of subchapter
15 B of chapter 1 is amended by striking out the item re-
16 lating to section 219 and inserting in lieu thereof the
17 following:

"Sec. 219. Retirement savings.
"Sec. 220. Cross references."

18 (2) The table of sections for subpart A of part I
19 of subchapter D of chapter 1 is amended by adding at
20 the end thereof the following:

"Sec. 408. Individual retirement accounts.
"Sec. 409. Retirement bonds.".

21 (3) The table of sections for chapter 43 is amended
22 by inserting after the item relating to section 4972 the
23 following new items:

"Sec. 4973. Tax on excess contributions to individual retirement accounts.
"Sec. 4974. Tax on certain accumulations in individual retirement accounts.".

1 (i) EFFECTIVE DATE.—The amendments made by sub-
2 section (a) shall apply to taxable years beginning after
3 December 31, 1973. The amendments made by this section
4 (other than subsection (a)) shall take effect January 1,
5 1974.

6 SEC. 2003. LIMITATIONS ON BENEFITS AND CONTRIBU-
7 TIONS.

8 (a) PLAN REQUIREMENTS.—

9 (1) Section 401(a) (relating to requirements for
10 qualification) is amended by inserting after paragraph
11 (15) the following new paragraph:

12 "(16) A trust shall not constitute a qualified trust
13 under this section unless the plan of which such trust is
14 a part provides for benefits or contributions which do
15 not exceed the limitations of section 415."

16 (2) Subpart B of part I of subchapter D of chapter
17 1 is amended by inserting after section 414 the following
18 new section:

19 "SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBU-
20 TIONS UNDER QUALIFIED PLANS.

21 "(a) GENERAL RULE.—

22 "(1) TRUSTS.—A trust which is a part of a pen-

1 sion, profit-sharing, or stock bonus plan shall not con-
2 stitute a qualified trust under section 401 (a) if—
3 "(A) in the case of a defined benefit plan, the
4 plan provides for the payment of benefits with
5 respect to a participant which exceed the limita-
6 tion of subsection (b),
7 "(B) in the case of a defined contribution plan,
8 under the plan contributions and other additions
9 with respect to any participant for any taxable year
10 exceed the limitation of subsection (c), or
11 "(C) in any case in which an individual is a
12 participant in both a defined benefit plan and a de-
13 fined contribution plan maintained by the employer,
14 the trust has been disqualified under subsection
15 (e) (5).
16 "(2) SECTION APPLIES TO CERTAIN ANNUITIES
17 AND ACCOUNTS.—In the case of—
18 "(A) an employee annuity plan described in
19 section 403 (a),
20 "(B) any annuity contract described in sec-
21 tion 403 (b),
22 "(C) an individual retirement account de-
23 scribed in section 408 (a), or
24 "(D) an individual retirement annuity de-
25 scribed in section 408 (b),

1 such contract, annuity plan, account, or annuity shall
2 not be considered to be described in section 403 (a),
3 403 (b), 408 (a), or 408 (b), as the case may be,
4 unless it satisfies the requirements of subparagraph
5 (A) or subparagraph (B) of paragraph (1), which-
6 ever is appropriate, and has not been disqualified under
7 subsection (e) (5). In the case of an annuity contract
8 described in section 403 (b), the preceding sentence
9 shall apply only to the portion of the annuity contract
10 which exceeds the limitation of subsection (b) or the
11 limitation of subsection (c), whichever is appropriate,
12 and the amount of the contribution for such portion
13 shall reduce the exclusion allowance as provided in sec-
14 tion 403 (b) (2).
15 "(b) LIMITATION FOR DEFINED BENEFIT PLANS.—
16 "(1) IN GENERAL.—Benefits with respect to a par-
17 ticipant exceed the limitation of this subsection if, when
18 expressed as an annual benefit (within the meaning of
19 paragraph (2)), such annual benefit is greater than the
20 lesser of—
21 "(A) $75,000, or
22 "(B) 100 percent of the participant's average
23 compensation for his high 3 years.
24 "(2) ANNUAL BENEFIT.—
25 "(A) IN GENERAL.—For purposes of para-

1 graph (1), the term 'annual benefit' means a bene-
2 fit payable annually in the form of a straight life an-
3 unity (with no ancillary benefits) under a plan to
4 which employees do not contribute.

5 "(B) ADJUSTMENT FOR CERTAIN OTHER
6 FORMS OF BENEFITS OR FOR EMPLOYEE CONTRIBU-
7 TIONS.—If the benefit under the plan is payable in
8 any form other than the form set forth in subpara-
9 graph (A), or if the employees contribute to the
10 plan, the determination as to whether the limitation
11 set forth in paragraph (1) has been satisfied shall
12 be made, in accordance with regulations prescribed
13 by the Secretary or his delegate, by adjusting such
14 benefit so that it is equivalent to the benefit referred
15 to in subparagraph (A). For purposes of this sub-
16 paragraph, any ancillary benefit which is not di-
17 rectly related to retirement income benefits shall
18 not be taken into account; and that portion of any
19 joint and survivor feature which constitutes a quali-
20 fied joint and survivor annuity shall not be taken
21 into account.

22 "(C) ADJUSTMENT TO $75,000 LIMIT WHERE
23 BENEFIT BEGINS BEFORE AGE 55.—If the retire-
24 ment income benefit under the plan begins before
25 age 55, the determination as to whether the $75,000

limitation set forth in paragraph (1) (A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to such a benefit beginning at age 55.

"(D) QUALIFIED JOINT AND SURVIVOR BENEFIT.—For purposes of this paragraph, the term 'qualified joint and survivor benefit' means a form of benefit under which (i) there is a joint and survivor annuity for the benefit of the participant and his spouse, and (ii) the benefit payable to the survivor is not greater than the benefit which would be payable if both the participant and his spouse were alive.

"(3) AVERAGE COMPENSATION FOR HIGH 3 YEARS.—For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant was both an active participant in the plan and had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401 (c) (1), the preceding sentence shall be applied by substituting for 'compensation from the employer' the participant's earned income (within the meaning of section 401 (c) (2) but determined without regard to any exclusion under section 911).

1 "(4) TOTAL ANNUAL BENEFITS NOT IN EXCESS
2 OF $10,000.—Notwithstanding the preceding provisions
3 of this subsection, the benefits payable with respect to a
4 participant under any defined benefit plan shall be
5 deemed not to exceed the limitation of this subsection
6 if—
7 "(A) the retirement benefits payable with re-
8 spect to such participant under such plan and under
9 all other defined benefit plans of the employer do
10 not exceed $10,000 for the plan year, and do not
11 exceed $10,000 for any prior plan year, and
12 "(B) the employer has not at any time main-
13 tained a defined contribution plan in which the par-
14 ticipant participated.
15 "(5) REDUCTION FOR SERVICE LESS THAN 10
16 YEARS.—In the case of an employee who has less than
17 10 years of service with the employer, the limitation
18 referred to in paragraph (1), and the limitation referred
19 to in paragraph (4), shall be the limitation determined
20 under such paragraph (without regard to this para-
21 graph), multiplied by a fraction, the numerator of which
22 is the number of years (or part thereof) of service with
23 the employer and the denominator of which is 10.
24 "(c) LIMITATION FOR DEFINED CONTRIBUTION
25 PLANS.—

1 "(1) IN GENERAL.—Contributions and other addi-
2 tions with respect to a participant exceed the limitation
3 of this subsection if, when expressed as an annual ad-
4 dition to the participant's account (within the meaning
5 of paragraph (2)), such annual addition is greater than
6 the lesser of—
7 "(A) $25,000, or
8 "(B) 25 percent of the participant's compen-
9 sation.
10 "(2) ANNUAL ADDITION.—For purposes of para-
11 graph (1), the term 'annual addition' means the sum for
12 any year of—
13 "(A) employer contributions,
14 "(B) the lesser of—
15 "(i) the amount of the employee contri-
16 butions in excess of 6 percent of his compensa-
17 tion, or
18 "(ii) one-half of the employee contribu-
19 tions, and
20 "(C) forfeitures.
21 "(3) PARTICIPANT'S COMPENSATION.—For pur-
22 poses of paragraph (1), the term 'participant's compen-
23 sation' means the compensation of the participant from
24 the employer for the year. In the case of an employee
25 within the meaning of section 401(c)(1), the preced-

1 ing sentence shall be applied by substituting for 'com-
2 pensation of the participant from the employer' the par-
3 ticipant's earned income (within the meaning of section
4 401 (c) (2) but determined without regard to any ex-
5 clusion under section 911).

6 "(4) SPECIAL RULE FOR SECTION 403 (b) CON-
7 TRACTS PURCHASED BY EDUCATIONAL INSTITU-
8 TIONS.—In applying paragraph (1) (B) in the case
9 of amounts contributed for an annuity contract described
10 in section 403 (b) for the year in which occurs a partici-
11 pant's separation from service for an educational in-
12 stitution (within the meaning of section 151 (e) (4)),
13 the amount taken into account under paragraph (1) (B)
14 shall be not less than the amount of the exclusion allow-
15 ance which would be determined under section 403
16 (b) (2) (without regard to this section) for the parti-
17 cipant's taxable year in which such separation occurs if—

18 "(A) the participant's years of service were
19 computed only by taking into account his service
20 for the employer during the 4-year period ending on
21 the date of such separation, and

22 "(B) the participant's includible compensation
23 were an amount equal to one-fourth of the aggre-
24 gate amount of compensation for such 4-year period
25 which is received from the educational institution

1 and which is includible in gross income (computed
2 without regard to sections 105(d) and 911 and
3 computed by excluding any amount contributed by
4 the employer for any annuity contract to which
5 section 403(b) applies).
6 This paragraph shall apply only if the taxpayer elects
7 its application at the time and in the manner provided
8 under regulations prescribed by the Secretary or his
9 delegate. Not more than one election may be made
10 under this paragraph with respect to any individual.
11 "(d) COST-OF-LIVING ADJUSTMENTS.—
12 "(1) IN GENERAL.—The Secretary or his delegate
13 shall adjust annually—
14 "(A) the $75,000 amount in subsection (b)
15 (1)(A),
16 "(B) the $25,000 amount in subsection (c)
17 (1)(A), and
18 "(C) in the case of a participant who is sep-
19 arated from the service, the amount taken into ac-
20 count under subsection (b)(1)(B),
21 for increases in the cost of living in accordance with
22 regulations prescribed by the Secretary or his delegate.
23 Such regulations shall provide for adjustment proce-
24 dures which are similar to the procedures used to ad-
25 just primary insurance amounts under section 215(i)
26 (2)(A) of the Social Security Act.

1 "(2) BASE PERIODS.—The base period taken into
2 account—
3 "(A) for purposes of subparagraphs (A) and
4 (B) of paragraph (1) shall be the calendar quar-
5 ter beginning October 1, 1973, and
6 "(B) for purposes of subparagraph (C) of
7 paragraph (1) shall be the last calendar quarter
8 of the calendar year before the calendar year in
9 which the participant is separated from the service.
10 "(e) LIMITATION IN CASE OF DEFINED BENEFIT
11 PLAN AND DEFINED CONTRIBUTION PLAN FOR SAME
12 EMPLOYEE.—
13 "(1) IN GENERAL.—In any case in which an indi-
14 vidual is a participant in both a defined benefit plan and
15 a defined contribution plan maintained by the employer,
16 the sum of the defined benefit plan fraction and the
17 defined contribution plan fraction for any year shall not
18 exceed 1.4.
19 "(2) DEFINED BENEFIT PLAN FRACTION.—For
20 purposes of this subsection, the defined benefit plan frac-
21 tion for any year is a fraction—
22 "(A) the numerator of which is the projected
23 benefit of the participant under the plan (deter-
24 mined as of the close of the year), and
25 "(B) the denominator of which is the projected

1 benefit of the participant under the plan (deter-
2 mined as of the close of the year) if the plan pro-
3 vided the maximum benefit allowable under sub-
4 section (b).
5 For purposes of this paragraph, the term 'benefit' means
6 an annual benefit as defined in subsection (b) (2).
7 "(3) DEFINED CONTRIBUTION PLAN FRACTION.—
8 For purposes of this subsection, the defined contribution
9 plan fraction for any year is a fraction—
10 "(A) the numerator of which is the sum of the
11 annual additions to the participant's account as of
12 the close of the year, and
13 "(B) the denominator of which is the sum of
14 the maximum amount of annual additions to such
15 account which could have been made under sub-
16 section (c) for such year and for each prior year
17 of service with the employer.
18 "(4) SPECIAL TRANSITION RULES FOR DEFINED
19 CONTRIBUTION FRACTION.—In applying paragraph (3)
20 with respect to years beginning before January 1,
21 1976—
22 "(A) the aggregate amount taken into account
23 under paragraph (3) (A) shall not exceed the ag-
24 gregate amount taken into account under paragraph
25 (3) (B), and

1 "(B) the amount taken into account under
2 subsection (c) (2) (B) (i) for any year concerned
3 shall be an amount equal to—
4 "(i) the excess of the aggregate amount
5 of employee contributions for all years begin-
6 ning before January 1, 1976, during which the
7 employee was an active participant of the plan,
8 over 10 percent of the employee's aggregate
9 compensation for all such years, multiplied by
10 "(ii) a fraction the numerator of which is 1
11 and the denominator of which is the number
12 of years beginning before January 1, 1976,
13 during which the employee was an active par-
14 ticipant in the plan.
15 Employee contributions made on or after October 2,
16 1973, shall be taken into account under subparagraph
17 (B) of the preceding sentence only to the extent that
18 the amount of such contributions does not exceed the
19 maximum amount of contributions permissible under
20 the plan as in effect on October 2, 1973.
21 "(5) DISQUALIFICATION OF TRUSTS AND
22 PLANS.—If, but for this paragraph, the sum referred to
23 in paragraph (1) would exceed 1.4, the Secretary or his
24 delegate shall, under regulations, disqualify one or more
25 trusts, one or more plans, or both, until such sum does

1 not exceed 1.4. In addition to taking into account such
2 other factors as may be necessary to carry out the pur-
3 poses of this subsection, the regulations prescribed under
4 this paragraph shall provide that—
5 "(A) no plan which has terminated shall be
6 disqualified until all other plans have been disquali-
7 fied, and
8 "(B) the plan (or combination of plans) hav-
9 ing the least number of participants shall be dis-
10 qualified first.
11 "(6) SPECIAL RULES FOR SECTIONS 403(b) AND
12 408.—For purposes of this subsection, any annuity
13 contract described in section 403(b), any individual
14 retirement account described in section 408(a), and
15 any individual retirement annuity described in section
16 408(b) for the benefit of a participant shall be treated
17 as a defined contribution plan maintained by each em-
18 ployer with respect to which the participant has the
19 control required under subsection (b) or (c) of section
20 414 (as modified by subsection (h)). In the case of
21 any annuity contract described in section 403(b), the
22 amount of the contribution disqualified by reason of
23 paragraph (5) of this subsection shall reduce the exclu-
24 sion allowance as provided in section 403(b)(2).

1 "(f) COMBINING OF PLANS.—

2 "(1) IN GENERAL.—For purposes of applying the
3 limitations of subsections (b), (c), and (e) (other than
4 subsection (e) (5))—

5 "(A) all defined benefit plans (whether or not
6 terminated) of an employer shall be treated as one
7 defined benefit plan, and

8 "(B) all defined contribution plans (whether
9 or not terminated) of an employer shall be treated
10 as one defined contribution plan.

11 "(2) ANNUAL COMPENSATION TAKEN INTO AC-
12 COUNT FOR DEFINED BENEFIT PLANS.—If the employer
13 has more than one defined benefit plan—

14 "(A) subsection (b) (1) (B) shall be applied
15 separately with respect to each such plan, but

16 "(B) in applying subsection (b) (1) (B) to
17 the aggregate of such defined benefit plans for pur-
18 poses of this subsection, the high 3 years of com-
19 pensation taken into account shall be the period of
20 consecutive calendar years (not more than 3) dur-
21 ing which the individual had the greatest aggregate
22 compensation from the employer.

23 "(g) PAYMENT OF ADDITIONAL BENEFITS.—Nothing
24 in this section or section 412 shall be construed to require the
25 disqualification of any plan solely by reason of the provision

1 of benefits for any individual in addition to the benefits which
2 may be provided under the limitations of subsections (b),
3 (c), and (e) if the contributions of the employer for the
4 purpose of providing such additional benefits are not allow-
5 able as a deduction to the employer before they are includible
6 in the gross income of the individual.

7 "(h) 50 PERCENT CONTROL.—For purposes of apply-
8 ing subsections (b) and (c) of section 414 to this section,
9 the phrase 'more than 50 percent' shall be substituted for the
10 phrase 'at least 80 percent' each place it appears in section
11 1563 (a) (1).

12 "(i) RECORDS NOT AVAILABLE FOR PAST PERIODS.—
13 Where for the period before January 1, 1976, or (if later)
14 the first day of the first plan year of the plan, the records
15 necessary for the application of this section are not avail-
16 able, the Secretary or his delegate may by regulations pre-
17 scribe alternative methods for determining the amounts to
18 be taken into account for such period."

19 (b) LIMIT ON EMPLOYER DEDUCTIONS.—The second
20 sentence of section 404 (a) (3) (A) (relating to limits on
21 deductible contributions) is amended by striking out "bene-
22 ficiaries under the plan." and inserting in lieu thereof
23 "beneficiaries under the plan, but the amount so deductible
24 under this sentence in any one succeeding taxable year to-
25 gether with the amount so deductible under the first sentence

1 of this subparagraph shall not exceed 25 percent of the com-
2 pensation otherwise paid or accrued during such taxable year
3 to the beneficiaries under the plan."

4 (c) CERTAIN ANNUITY AND BOND PURCHASE
5 PLANS.—

6 (1) Section 404(a)(2) (relating to the general
7 rule for deduction for employee annuities) is amended
8 by striking out "(15)" and inserting in lieu thereof
9 "(15), (16), and (19)".

10 (2) Section 405(a)(1) (relating to requirements
11 for qualified bond purchase plans) is amended by strik-
12 ing out "and (8)," and inserting in lieu thereof "(8),
13 (16), and (19)".

14 (3) Section 805(d)(1)(C) (relating to pension
15 plan reserves) is amended by striking out "and (15)"
16 and inserting in lieu thereof "(15), (16), and (19)".

17 (4) Section 403(b)(2) (relating to exclusion
18 allowance) is amended by adding at the end thereof the
19 following new sentence: "The exclusion allowance for
20 any employee for the taxable year shall be reduced to
21 the maximum amount not disqualified by section 415
22 (relating to limitations on benefits and contribu-
23 tions under qualified plans)."

24 (d) EFFECTIVE DATE.—

25 (1) GENERAL RULE.—The amendments made by
26 this section shall apply to contributions made or benefits

1 accrued in years beginning after December 31, 1975.
2 (2) TRANSITION RULE FOR DEFINED BENEFIT
3 PLANS.—In the case of an individual who was an active
4 participant in a defined benefit plan on October 2, 1973,
5 if—
6 (A) the annual benefit (within the meaning of
7 section 415(b)(2) of the Internal Revenue Code
8 of 1954) payable to such participant on retirement
9 does not exceed 100 percent of his annual rate of
10 compensation on such date, and
11 (B) such annual benefit is no greater than the
12 annual benefit which would have been payable to
13 such participant on retirement if (i) all the terms
14 and conditions of such plan in existence on such
15 date had remained in existence until such retire-
16 ment, and (ii) his compensation taken into account
17 for any period after October 2, 1973, had not ex-
18 ceeded his annual rate of compensation on such
19 date,
20 then such annual benefit shall be treated as not exceed-
21 ing the limitation of subsection (b) of section 415 of
22 the Internal Revenue Code of 1954.
23 **SEC. 2004. TAXATION OF CERTAIN LUMP SUM DISTRIBU-**
24 **TIONS.**
25 (a) TREATMENT OF TOTAL DISTRIBUTIONS.—Section

1 402 (e) (relating to certain plan terminations) is amended
2 to read as follows:
3 "(e) TAX ON LUMP SUM DISTRIBUTIONS.—
4 "(1) IMPOSITION OF SEPARATE TAX ON LUMP
5 SUM DISTRIBUTIONS.—
6 "(A) SEPARATE TAX.—There is hereby im-
7 posed a tax (in the amount determined under sub-
8 paragraph (B)) on the ordinary income portion of
9 a lump sum distribution.
10 "(B) AMOUNT OF TAX.—The amount of tax
11 imposed by subparagraph (A) for any taxable
12 year shall be an amount equal to the amount of the
13 initial separate tax for such taxable year multiplied
14 by a fraction, the numerator of which is the ordinary
15 income portion of the lump sum distribution for the
16 taxable year and the denominator of which is the
17 total taxable amount of such distribution for such
18 year.
19 "(C) INITIAL SEPARATE TAX.—The initial
20 separate tax for any taxable year is an amount equal
21 to 10 times the tax which would be imposed by
22 subsection (c) of section 1 if the recipient were an
23 individual referred to in such subsection and the tax-
24 able income were an amount equal to one-tenth of
25 the excess of—

1 "(i) the total taxable amount of the lump
2 sum distribution for the taxable year, over
3 "(ii) the minimum distribution allowance.
4 "(D) MINIMUM DISTRIBUTION ALLOW-
5 ANCE.—For purposes of this paragraph, the mini-
6 mum distribution allowance for the taxable year is
7 an amount equal to—
8 "(i) the lesser of $10,000 or one-half of
9 the total taxable amount of the lump sum dis-
10 tribution for the taxable year, reduced (but not
11 below zero) by
12 "(ii) 20 percent of the amount (if any)
13 by which such total taxable amount exceeds
14 $20,000.
15 "(E) LIABILITY FOR TAX.—The recipient shall
16 be liable for the tax imposed by this paragraph.
17 "(2) MULTIPLE DISTRIBUTIONS AND DISTRIBU-
18 TIONS OF ANNUNITY CONTRACTS.—In the case of any
19 recipient of a lump sum distribution for the taxable year
20 with respect to whom during the 6-taxable-year period
21 ending on the last day of the taxable year there has been
22 one or more other lump sum distributions after December
23 31, 1973, in computing the tax imposed by paragraph
24 (1) (A), the total taxable amounts of all such distribu-

1 tions during such 6-taxable-year period shall be
2 aggregated, but the amount of tax so computed
3 shall be reduced by the sum of (A) the amount
4 of the tax imposed by paragraph (1) (A) paid with
5 respect to such other distributions, plus (B) that por-
6 tion of the tax on the aggregated total taxable amounts
7 which is attributable to annuity contracts. For pur-
8 poses of this paragraph, a beneficiary of a trust to which
9 a lump sum distribution is made shall be treated as the
10 recipient of such distribution if the beneficiary is an em-
11 ployee (including an employee within the meaning of
12 section 401 (c) (1)) with respect to the plan under
13 which the distribution is made or if the beneficiary is
14 treated as the owner of such trust for purposes of subpart
15 E of part I of subchapter J. In the case of the distribution
16 of an annuity contract, the taxable amount of such dis-
17 tribution shall be deemed to be the fair market value of
18 the contract, determined on the date of such distribution.
19 The Secretary or his delegate shall prescribe such regula-
20 tions as may be necessary to carry out the purposes of
21 this paragraph.
22 "(3) ALLOWANCE OF DEDUCTION.—The ordinary
23 income portion of a lump sum distribution for the taxable
24 year shall be allowed as a deduction from gross income

1 for such taxable year, but only to the extent included
2 in the taxpayer's gross income for such taxable year.
3 "(4) DEFINITIONS AND SPECIAL RULES.—
4 "(A) LUMP SUM DISTRIBUTION.—For pur-
5 poses of this section and section 403, the term 'lump
6 sum distribution' means the distribution or payment
7 within one taxable year of the recipient of the bal-
8 ance to the credit of an employee which becomes
9 payable to the recipient—
10 "(i) on account of the employee's death,
11 "(ii) after the employee attains age 59½,
12 "(iii) on account of the employee's sep-
13 aration from the service, or
14 "(iv) after the employee has become dis-
15 abled (within the meaning of section 72
16 (m) (7))
17 from a trust which forms a part of a plan described
18 in section 401 (a) and which is exempt from tax
19 under section 501 or from a plan described in sec-
20 tion 403 (a) (2). Clause (iii) of this subparagraph
21 shall be applied only with respect to an individual
22 who is an employee without regard to section 401
23 (c) (1), and clause (iv) shall be applied only with
24 respect to an employee within the meaning of sec-

1 tion 401 (c) (1). For purposes of this subparagraph,
2 a distribution of an annuity contract from a trust or
3 annuity plan referred to in the first sentence of this
4 subparagraph shall be treated as a lump sum
5 distribution.

6 "(B) ELECTION OF LUMP SUM TREATMENT.—
7 For purposes of this section and section 403, no
8 amount which is not an annuity contract may be
9 treated as a lump sum distributed under subparagraph
10 (A) unless the taxpayer elects for the taxable year
11 to have all such amounts received during such year
12 so treated at the time and in the manner provided
13 under regulations prescribed by the Secretary or
14 his delegate. Not more than one election may be
15 made under this subparagraph with respect to any
16 individual after such individual has attained age
17 59½. No election may be made under this subpara-
18 graph by any taxpayer other than an individual, an
19 estate, or a trust. The preceding sentence shall apply
20 to a trust in the case of any distribution only if—

21 "(i) the trust is the sole recipient of the
22 entire balance to the credit of the employee
23 under subparagraph (A), and

24 "(ii) the use of the trust device does not
25 affect the includibility of the distribution in the
26 gross estate of the employee.

1 "(C) AGGREGATION OF CERTAIN TRUSTS AND
2 PLANS.—For purposes of determining the balance
3 to the credit of an employee under subparagraph
4 (A)—
5 "(i) all trusts which are part of a plan
6 shall be treated as a single trust, all pension
7 plans maintained by the employer shall be
8 treated as a single plan, all profit-sharing plans
9 maintained by the employer shall be treated as
10 a single plan, and all stock bonus plans main-
11 tained by the employer shall be treated as a
12 single plan, and
13 "(ii) trusts which are not qualified trusts
14 under section 401 (a) and annuity contracts
15 which do not satisfy the requirements of sec-
16 tion 404 (a) (2) shall not be taken into account.
17 "(D) TOTAL TAXABLE AMOUNT.—For pur-
18 poses of this section and section 403, the term
19 'total taxable amount' means, with respect to a lump
20 sum distribution, the amount of such distribution
21 which exceeds the sum of—
22 "(i) the amounts considered contributed
23 by the employee (determined by applying sec-
24 tion 72 (f)), which employee contributions shall
25 be reduced by any amounts theretofore distrib-

1 uted to him which were not includible in gross
2 income, and
3 "(ii) the net unrealized appreciation at-
4 tributable to that part of the distribution which
5 consists of the securities of the employer corpo-
6 ration so distributed.
7 "(E) ORDINARY INCOME PORTION.—For pur-
8 poses of this section, the term 'ordinary income por-
9 tion' means, with respect to a lump sum distribution,
10 so much the total taxable amount of such distribu-
11 tion as is equal to the product of such total taxable
12 amount multiplied by a fraction—
13 "(i) the numerator of which is the number
14 of calendar years of active participation by the
15 employee in such plan after December 31, 1973,
16 and
17 "(ii) the denominator of which is the
18 number of calendar years of active participa-
19 tion by the employee in such plan.
20 "(F) EMPLOYEE.—For purposes of this sub-
21 section and subsection (a) (2), except as otherwise
22 provided in subparagraph (A), the term 'employee'
23 includes an individual who is an employee within
24 the meaning of section 401 (c) (1) and the em-
25 ployer of such individual is the person treated as his
26 employer under section 401 (c) (4).

1 "(G) COMMUNITY PROPERTY LAWS.—The
2 provisions of this subsection, other than paragraph
3 (3), shall be applied without regard to the com-
4 munity property laws of any State.
5 "(H) MINIMUM PERIOD OF SERVICE.—No
6 amount distributed to an employee from or under a
7 plan may be treated as a lump sum distributed under
8 subparagraph (A) unless he has been a participant
9 in the plan for 5 or more taxable years before the
10 taxable year in which such amounts are distributed.
11 "(I) AMOUNTS SUBJECT TO PENALTY.—This
12 subsection shall not apply to amounts described in
13 clause (ii) of subparagraph (A) of section 72 (m)
14 (5) to the extent that section 72 (m) (5) applies
15 to such amounts.
16 "(J) UNREALIZED APPRECIATION OF EM-
17 PLOYER SECURITIES.—In the case of a lump sum
18 distribution including securities of the employer cor-
19 poration, the amount of net unrealized appreciation
20 of such securities and the resulting adjustments to
21 the basis of such securities shall be determined under
22 regulations prescribed by the Secretary or his dele-
23 gate.
24 "(K) SECURITIES.—For purposes of this sub-
25 section, the terms 'securities' and 'securities of the

1 employer corporation' have the respective mean-
2 ings provided by subsection (a) (3)."
3 (b) PHASEOUT OF CAPITAL GAINS TREATMENT.—
4 (1) IN GENERAL.—Section 402 (a) (2) (relating
5 to capital gains treatment for certain distributions) is
6 amended to read as follows:
7 "(2) CAPITAL GAINS TREATMENT FOR PORTION
8 OF LUMP SUM DISTRIBUTIONS.—In the case of an em-
9 ployee trust described in section 401 (a), which is ex-
10 empt from tax under section 501 (a), so much of the
11 total taxable amount (as defined in subparagraph (D)
12 of subsection (e) (4)) of a lump sum distribution as
13 is equal to the product of such total taxable amount
14 multiplied by a fraction—
15 "(A) the numerator of which is the number
16 of calendar years of active participation by the em-
17 ployee in such plan before January 1, 1974, and
18 "(B) the denominator of which is the number
19 of calendar years of active participation by the em-
20 ployee in such plan,
21 shall be treated as a gain from the sale or exchange of a
22 capital asset held for more than 6 months. For purposes
23 of computing the fraction under this paragraph, the
24 Secretary or his delegate may prescribe regulations

1 under which plan years may be used in lieu of calendar
2 years."
3 (2) AMENDMENT OF SECTION 403.—That part of
4 paragraph (2) (A) of section 403 (a) which fol-
5 lows clause (ii) thereof is amended to read as fol-
6 lows:
7 "(iii) a lump sum distribution (as defined
8 in section 402 (e) (4) (A)) is paid to the re-
9 cipient,
10 so much of the total taxable amount (as defined
11 in section 402 (e) (4) (D)) of such distribution as
12 is equal to the product of such total taxable amount
13 multiplied by the fraction described in section 402
14 (a) (2) shall be treated as a gain from the sale or
15 exchange of a capital asset held for more than 6
16 months.
17 "(B) CROSS-REFERENCE.—

"For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).".

18 (c) CONFORMING AMENDMENTS.—
19 (1) Subparagraph (C) of section 402 (a) (3) is
20 repealed.
21 (2) Paragraph (5) (as in effect on December 31,
22 1973) of section 402 (a) is repealed.

1 (3) Section 72 is amended by striking out subsec-
2 tion (n) thereof and by redesignating subsections (o)
3 and (p) as (n) and (o), respectively.
4 (4) The second sentence of section 46 (a) (3) and
5 the second sentence of section 50A (a) (3) are each
6 amended by inserting "section 402 (e) (relating to
7 tax on lump sum distributions)," before "section 408 (f)".
8 (5) The third sentence of section 901 (a) is
9 amended by inserting "against the tax imposed by
10 section 402 (e) (relating to tax on lump sum distribu-
11 tions)," before "against the tax imposed by section
12 408 (f)".
13 (6) Subsection 1304 (b) (relating to special rules)
14 is amended by striking out paragraph (2) and by re-
15 designating paragraphs (3), (4), (5), and (6) as
16 paragraphs (2), (3), (4), and (5), respectively.
17 (7) Subparagraph (A) of section 56 (a) (2) and
18 paragraph (1) of section 56 (c) are each amended by
19 inserting before "408 (f)" the following: "402 (e),".
20 (8) Sections 871 (b) (1) and 877 (b) are each
21 amended by inserting ", 402 (e) (1)," after "section 1".
22 (9) Section 62 (defining adjusted gross income)
23 is amended by inserting after paragraph (10) the fol-
24 lowing new paragraph:

1 "(11) CERTAIN PORTION OF LUMP-SUM DISTRIBU-
2 TIONS FROM PENSION PLANS TAXED UNDER SECTION
3 402(e).—The deduction allowed by section 402(e)
4 (3)."
5 (10) Section 122 (b) (2) (relating to considera-
6 tion for the contract) is amended by striking out "72
7 (o)" and inserting "72 (n)".
8 (11) Section 405(e) (relating to capital gains
9 treatment and limitation of tax not to apply to bonds
10 distributed by trusts) is amended by striking out "Sec-
11 tion 72(n) and section 402(a) (2)" and inserting
12 "Subsections (a) (2) and (e) of section 402".
13 (12) Section 406(c) (relating to termination of
14 status as deemed employee, etc.) is amended by striking
15 out "section 72(n), section 402(a) (2)" and insert-
16 ing "subsections (a) (2) and (e) of section 402".
17 (13) Section 407(c) (relating to termination of
18 status as deemed employee, etc.) is amended by strik-
19 ing out "section 72(n), section 402(a) (2)" and in-
20 serting "subsections (a) (2) and (e) of section 402".
21 (14) Section 1348(b) (1) (relating to earned
22 income) is amended by striking out "72(n), 402(a)
23 (2)" and inserting "402(a) (2), 402(e)".
24 (d) EFFECTIVE DATE.—The amendments made by this

1 section shall apply only with respect to distributions or pay-
2 ments made after December 31, 1973, in taxable years be-
3 ginning after such date.

4 SEC. 2005. SALARY REDUCTION REGULATIONS.

5 (a) NO REGULATIONS TO TAKE EFFECT BEFORE
6 MARCH 16, 1975.—

7 (1) The Secretary of the Treasury is hereby
8 directed to withdraw the proposed salary reduction
9 regulations (37 Fed. Reg. 25938).

10 (2) On or before December 31, 1974, no other
11 proposed salary reduction regulations may be issued.

12 (3) On or before March 15, 1975, no salary reduc-
13 tion regulations may be issued in final form.

14 (4) Until salary reduction regulations have been
15 issued in final form, the law shall be administered—

16 (A) without regard to the proposed salary re-
17 duction regulations described in paragraph (1) and
18 without regard to any other proposed salary reduc-
19 tion regulations, and

20 (B) in the manner such law was administered
21 before January 1, 1972.

22 (b) ADMINISTRATION IN THE CASE OF QUALIFIED
23 PROFIT-SHARING PLANS.—In applying subsection (a) (4)
24 to the tax treatment of contributions to qualified profit-
25 sharing plans where the contributed amounts are distributable

1 only after a period of deferral, the law shall be administered
2 in a manner consistent with the following revenue rulings:
3 (1) Revenue Ruling 56–497 (1956—2 C.B. 284),
4 (2) Revenue Ruling 63–180 (1963—2 C.B. 189),
5 and
6 (3) Revenue Ruling 68–89 (1968—1 C.B. 402).
7 (c) LIMITATION ON RETROACTIVITY OF FINAL REG-
8 ULATIONS.—In the case of any salary reduction regulations
9 which become final after March 15, 1975—
10 (1) for purposes of chapter 1 of the Internal Rev-
11 enue Code of 1954, such regulations shall not take effect
12 before January 1, 1975; and
13 (2) for purposes of chapter 21 of such Code (re-
14 lating to Federal Insurance Contributions Act) and for
15 purposes of chapter 24 of such Code (relating to with-
16 holding of income tax at sources), such regulations shall
17 not take effect before the day on which such regula-
18 tions are issued in final form.
19 (d) SALARY REDUCTION REGULATIONS DEFINED.—
20 For purposes of this section, the term "salary reduction regu-
21 lations" means regulations dealing with the includibility in
22 gross income (at the time of contribution) of amounts con-
23 tributed to pension, etc., plans.
24 SEC. 2006. RULES FOR CERTAIN NEGOTIATED PLANS.
25 (a) TREATMENT OF CERTAIN PARTICIPANTS IN THE

1 PLAN.—Section 404 (c) (relating to certain negotiated
2 plans) is amended by inserting after the first sentence the
3 following new sentences: "For purposes of this chapter and
4 subtitle B, in the case of any individual who before July 1,
5 1974, was a participant in a plan described in the preceding
6 sentence—

7 "(A) such individual, if he is or was an employee
8 within the meaning of section 401 (c) (1), shall be
9 treated (with respect to service covered by the plan)
10 as being an employee other than an employee within
11 the meaning of section 401 (c) (1) and as being an em-
12 ployee of a participating employer under the plan,

13 "(B) earnings derived from service covered by the
14 plan shall be treated as not being earned income within
15 the meaning of section 401 (c) (2), and

16 "(C) such individual shall be treated as an em-
17 ployee of a participating employer under the plan with
18 respect to service before July 1, 1975, covered by the
19 plan.

20 Section 277 (relating to deductions incurred by certain mem-
21 bership organizations in transactions with members) shall
22 not apply to any trust described in this subsection.".

23 (b) OTHER AMENDMENTS TO SECTION 404 (c) (1).—

24 (1) Paragraph (1) of the first sentence of section
25 404 (c) is amended by striking out "and pensions" and
26 inserting in lieu thereof "or pensions".

1 (2) The last sentence of section 404 (c) is amended
2 by striking out "This subsection" and inserting in lieu
3 thereof "The first and third sentences of this subsection".
4 (c) EFFECTIVE DATE.—The amendments made by this
5 section shall apply to taxable years ending on or after
6 June 30, 1972.

Passed the House of Representatives February 28, 1974.

Attest: W. PAT JENNINGS,
Clerk.

[From the Congressional Record—Senate, Mar. 29, 1974]

Pension Reform

Mr. Javits. Mr. President, the Congressional Research Service at the Library of Congress has completed a comparative analysis of the Senate-passed and House-passed versions of H.R. 2, the pension reform bill. In view of the tremendous interest in this legislation I ask unanimous consent that the text of the Congressional Research Service analysis be printed in the Record.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

"Private Pension Reform Legislation, 93d Congress, March 1974—Comparison of Senate-Passed and House-Passed Versions of H.R. 2

"(By Peter Henle, Senior Specialist, Labor Economics Division; Raymond Schmitt, Analyst in Social Legislation, Education and Public Welfare Division; and Ann M. Marley, Analyst in Taxation and Fiscal Policy, Economics Division)

INTRODUCTION

"The following tabulation compares the major provisions of the Senate-passed and the House-passed versions of H.R. 2, private pension reform legislation.

"Action on this legislation was taken first in the Senate, culminating with passage of H.R. 4200 on September 19, 1973. This bill was the product of joint effort by the Labor and Public Welfare and Finance Committees. The Labor and Public Welfare Committee had reported out S. 4, on April 18, 1973 while the Finance Committee had reported out S. 1179 on August 21, 1973. A compromise bill worked out by the two committees was introduced on the floor of the Senate September 18 as a substitute for S. 4, the pending measure. Following the adoption of several amendments, the bill was passed 93–0 and its text incorporated in H.R. 4200, a minor House-passed bill to continue certain servicemen's and former servicemen's survivor annuity benefits.

"On the House side, the Education and Labor Committee had before it H.R. 2 which was reported out of committee on September 25, 1973. The Ways and Means Committee, to whom the Senate-passed H.R. 4200 was referred, considered pension reform legislation beginning in October and reported out a new bill, H.R. 12481, on February 5, 1974. Subsequently, as the two committees worked to develop conforming bills, the Education and Labor Committee on February 19, 1974 approved the text of a new bill which was introduced the following day as H.R. 12906; similarly, the Ways and Means Committee reported out a new bill (H.R. 12855) on February 21, 1974.

"On February 26, 1974 the bills from the two House committees were joined as a substitute for the text of H.R. 2, the pending House business. The Education and Labor Committee bill, H.R. 12906, became Title I and the Ways and Means Committee bill, H.R. 12855, became Title II. Few amendments were adopted, and the House passed H.R. 2 on February 28, 1974 by a vote of 376–4.

"Subsequently, on March 4, 1974, the Senate passed H.R. 2, after substituting for its text the language of the previously passed H.R. 4200."

[The comparison of the bill H.R. 2 as passed by the Senate and as passed by the House, follows:]

Private Pension Reform Legislation—Comparison of Senate-Passed and House-Passed Versions of H.R. 2

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Short Title	
Retirement Income Security for Employees Act.	Employees Benefit Securtiy Act of 1974.	Employees Benefit Securtiy Act of 1974.
	Administering Agency	
Generally, most of the titles of the Act would be jointly administered by the Labor and Treasury Departments although the roles would vary. The Labor Department would have the principal role in administering reporting, disclosure, and fiduciary standards as well as the plan termination insurance and portability programs. The Treasury Department, on the other hand, would be largely responsible for vesting and funding. The Treasury Department would exclusively administer the tax provisions relating to retirement savings, increases in the present deductions under plans for the self-employed (Keogh plans), and limitations on benefits and contributions.	Primarily the Secretary of Labor, although the Secretary of the Treasury is assigned certain functions under the Act. Secretary of Labor to prescribe rules and regulations necessary to carry out the provisions of Title I (fiduciary responsibility and disclosure, vesting, funding, and plan termination insurance). Vesting and funding regulations, however, must be approved by the Secretary of Treasury.	Primarily the Secretary of the Treasury, although the Secretary of Labor is assigned certain functions under the Act. Secretary of Treasury to prescribe rules and regulations necessary to carry out the provisions of Title II (vesting, funding, contributions of self-employed, retirement savings for individuals not covered by any plan, limitations on benefits and contributions, taxation of certain lump-sum distributions, and salary reduction plans). Vesting and funding regulations must be approved by the Secretary of Labor.
	Participation and vesting	
	Coverage	
All private pension plans regardless of their tax qualification status and size. (sec. 201, 221).	All private pension plans established or maintained by employers or employee organizations affecting or engaged in commerce. However, all government and church plans are exempt. (sec. 201).	All private plans seeking to obtain or retain their, tax qualification status. However, all government and church plans are exempt. (sec. 1011).
	Participation Requirement	
Plan may not require as a condition to be eligible to participate, a period of service of more than one year, or the attainment of age 30, whichever occurs later. (sec. 201).	Plan may not require as a condition to be eligible to participate, a period of service of more than three years, or the attainment of age 25 and one year of service, whichever comes first. However, a defined benefit plan may exclude any employee who commences employment at an age within 5 years of the normal retirement age under the plan. (sec. 202).	Same as Title I. (sec. 1011).

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Definition of Year of Service	
Regulations concerning the definition of year of service are to be promulgated by the Secretary of Treasury after consultation with the Secretary of Labor. Beginning with 1982, would include any year in which an employee worked at least 5 months with at least 80 hours of work each month. (sec. 221).	To be defined primarily by regulations developed jointly by Secretaries of Labor and Treasury but subject to guidelines set forth in the bill—including guidelines for seasonal employees. Year of service to take into account the customary working period (such as hours, days, weeks, months, or years) in any industry where, by the nature of the employment, the work period is substantially different from industry generally. (sec. 206).	Essentially the same as Title I. (sec. 1011).
	Vesting Requirement	
Employees must be vested in at least 25 percent of his accumulated benefits, by the end of the fifth year of service. This minimum percentage would then increase 5 percentage points in each of the next five years (at least 50 percent vested by the end of the tenth year of service) and by 10 percentage points in each of the following 5 years (so that the employee must be fully vested not later than the completion of his 15th year of service). Once an employee becomes eligible to participate, up to five years of participation service are to be credited to years of service for vesting eligibility. (sec. 221).	These alternatives are provided: (1) Employee must be vested in at least 25 percent of his accumulated benefits by the end of the fifth year of service; the minimum percentage to increase 5 percentage points in each of the next 5 years (at least 50 percent vested by the end of the tenth year of service) and by 10 percentage points in each of the following 5 years (so that the employee must be fully vested not later than the completion of his 15th year of service).	Same as Title I. (sec. 1012).
	(2) Fully vested (100 percent) by the end of the 10th year of service.	
	(3) Rule of 45—that is, at least 50 percent vested when age plus service equal 45 years (provided that there is at least 5 years of service); the minimum percentage to increase by 10 percentage points in each of the following 5 years. (sec. 203).	
	Application of vesting requirement to service prior to effective date of Act	

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
With certain exceptions, service prior to effective date is included, both for calculating the years of service required to qualify for vesting and for determining the years of accumulated benefits to be vested. (sec 221).	With certain exceptions, service prior to the effective date is included, both for calculating the years of service required to qualify for vesting and for determining the years of accumulated benefits to be vested. However, service by an employee prior to January 1, 1969, is required to be taken into account only if the employee has served at least 5 years with that employer (or under a multiemployer plan) after December 31, 1968. (sec. 203).	Same as title I. (sec. 1012).
	Treatment of Breaks-in-Service	
In computing years of service to apply the vesting standard, only three of the five years of service need be consecutive. Generally service before and after breaks are to be aggregated for vesting and participation. (sec. 221).	In determining an individual's participation and vesting status after a break in service, a plan may exclude prior service of an employee who has a break in service of 1 or more years until the individual completes up to 1 year of work upon returning. However, where a rehired employee had completed at least 4 consecutive years of service before the break, his prior years of service must be taken into consideration for purposes of computing his years of service unless the break is for 6 years or more. However, if a rehired employee acquired a nonforfeitable right to at least 50 percent of his accrued benefits prior to the break in service, all his prior service must be taken into consideration in computing his years of service, regardless of the duration of the break. (sec. 206).	Same as title I. (sec. 1011).
	Transition Rules for Existing Plans	
No provision.	Plans in effect on January 1, 1974 would be required to provide only 50 percent of the otherwise applicable vesting requirement during the first year that the bill's vesting standards become effective, with this percentage rising by 10 percent annually until the full requirement has to be provided after five years. (sec. 203).	The same as Title I but applies to plans in effect on December 31, 1973. (sec. 1012).

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Vesting of Employer Contributions in Contributory Plans	
Vesting requirement does not apply to benefits arising from employer contributions if employee withdraws his contributions upon termination of employment or active participation in plan. (sec. 221).	No pension plan to which employees contribute shall provide for forfeiture of a participant's accrued benefit derived from employer contributions (whether or not otherwise forfeitable), solely because the employee withdraws his own contributions. (sec. 203).	Same as Title I. (sec. 1021).
	Social Security Offset	
No provision.	Social security offset plans are not prohibited if (1) in the case of individuals currently receiving benefits, the pension benefit is not decreased by any subsequent increase in social security benefits or (2) in the case of a participant terminating with a vested benefit, such benefit is not decreased by subsequent increases in social security benefits. (sec. 204).	Same as Title I. (sec. 1021).
	"Highly Mobile" Employees such as Engineers or Scientists	
Secretary of Labor is to develop modifications of Federal Procurement Regulations to insure that such employees under Federal contracts will be protected against forfeiture of their retirement benefits. In addition, the antidiscrimination provisions of the tax law are modified to allow an employer to establish a separate plan for highly mobile employees with lower benefits but with more liberal vesting than under his plan for other employees. (sec. 282).	No provision.	Essentially the same as Senate-passed bill, except that either House of Congress may disapprove proposed changes in procurement regulations. (sec. 1012, 1024).
	Effective Date	
Upon enactment for new plans; for existing plans, beginning with plan years commencing after December 31, 1975. If, on request, the Secretary of Labor determines that the vesting requirement would impose "substantial economic hardship" on individual plans, the effective date may be postponed up to six years. (sec. 221).	Upon enactment for new plans; for plans in existence on January 1, 1974 beginning with plan years after December 31, 1975. For plans maintained under collective bargaining agreements, the vesting requirements take effect with plan year beginning with termination of existing collective bargaining agreement or December 31, 1980, whichever occurs first (but in no event earlier than December 31, 1976). (sec. 207).	Essentially the same as Title I. (sec. 1017).

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PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Funding	
	Coverage	
All private pension plans regardless of tax qualification status and size. Excludes all government and church plans. Special rules provide an exemption for certain insured plans, and for profit-sharing, stock bonus, and money purchase plans. (sec. 241).	All private pension plans except governmental or church plans, a plan of a fraternal association, profit-sharing or savings plans, plans funded through insurance contracts, plus certain others. (sec. 301).	All tax-qualified plans with essentially the same exceptions as Title I. However, government and church plans must meet requirements of present law.
	Basic Requirement	
Annual contributions to pension fund must be sufficient to 1) equal each year's "current service costs", and 2) amortize "past service costs" in no less than equal payments over no more than 30 years. The funding requirement does not apply merely to vested benefits, but to all accrued plan benefits. (sec. 241).	Annual contributions to pension fund must be sufficient to equal "current service costs", and to amortize the "past service costs" over no more than 30 years (existing plans given 40 years). The funding requirement applies to all accrued plan benefits (both vested and nonvested unfunded past service liabilities). (sec. 302).	Same as Title 1. (sec. 1013).
	Treatment of Plan Amendments	
Plan amendments which increase past service costs by as much as 5% may be treated as a separate plan for purposes of the funding requirement and amortized within 30 years. Benefits created by other plan amendments must be amortized over 15 years or the average remaining service life of the covered participants, whichever is shorter. (sec. 241).	Plan amendments must be amortized within 30 years. (sec. 302).	Same as Title I. (sec. 1013).
	Treatment of Experience Gains and Losses	
Experience losses or gains resulting from changes in asset valuation or other developments not foreseen in advance must be amortized over 15 years or the average remaining service life of the covered participants, whichever is shorter. (sec. 241).	Experience losses must be amortized within 15 years. (sec. 302).	Same as Title I. (sec. 1013).

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Special Hardship Provisions	
Employer may obtain a waiver for his required annual contribution from the Secretary of the Treasury. Any amounts waived must be amortized over no more than ten years and no more than 5 waivers may be granted in any ten-year period. The plan may not be amended to increase benefits as long as any waived amounts remain unpaid. (sec. 241).	When a plan fails to meet the funding requirements for five consecutive plan years, the administrator shall amend the benefit schedule to reduce the value of the accrued liabilities to such an extent as is necessary to bring the plan's funding schedule into conformity with the funding requirements. (sec. 303).	If an employer is unable to satisfy the minimum funding standard without substantial business hardship and if the application of the funding standard would be adverse to the interests of plan participants, the Secretary may waive the funding requirements. However, the minimum funding standard may not be waived more than five of any 15 consecutive years. (sec. 1013).
	Treatment of Multi-Employer Plans	
Multi-employer plans permitted a longer funding period of forty years. Moreover, with respect to any multi-employer plan for which the Secretary of Labor finds that even this requirement would impose "substantial economic hardship" on the plan, the 40-year period may be extended to as much as 50 years. (sec. 241).	Multi-employer plans permitted a longer funding period of forty years for past service costs and increases caused by plan amendments. Moreover, they may be given an additional 10 years to fund past service liabilities if the plan would experience a "substantial hardship". Further, experience losses may be amortized within 20 years. (sec. 302).	Same as title I. (sec. 1013).
	Effective Date	
For new plans, the funding requirement would take effect on enactment. For existing plans, the requirement would take effect beginning with plan years after December 31, 1975. For plans for which implementation of the funding requirement would impose "substantial economic hardship", as determined by the Secretary of Labor, the effective date may be postponed for a period of up to six additional years. (sec. 241).	For new plans, the funding requirement would take effect on enactment. For plans in existence on January 1, 1974, funding requirements take effect with plan years beginning after December 31, 1975. In the case of a plan maintained pursuant to a collective bargaining agreement, funding requirement takes effect on the earlier of (a) the date on which the collective bargaining agreement terminates or (b) December 31, 1980—but in no event earlier than December 31, 1976. (sec. 305).	Same as Title I. (sec. 1017).

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Plan termination insurance	
	Administering Agency	
A Pension Benefit Guaranty Corporation would be established as a government corporation within the Department of Labor. It would be administered by a three-member board of directors, with the Secretary of Labor as Chairman. Other board members would be the Secretaries of Treasury and Commerce. The Corporation is permitted to borrow up to $100 million from the Treasury. (sec. 402–403)	Essentially the same as Senate-passed bill except that board of directors would be comprised of Secretary of Labor as Chairman and two other officers or employees of the Labor Department. The Corporation is directed to establish two trust funds, a Single Employer Primary Trust Fund and a Multiemployer Trust Fund. The Corporation may also establishing an Optional Trust Fund for single employers. The Corporation is permitted to borrow up to $100 million from the Treasury. (sec. 401, 404)	No provision. [Ways and Means Committee Report No. 93–807 on H.R. 12855 states that although the Committee regards the development of an adequate program of plan termination insurance as essential to protect the rights of covered employees, the bill makes no provision for such termination insurance since provision is included in the Education and Labor Committee bill.].
	Coverage	
All qualified plans regardless of size except money-purchase, profit sharing, stock bonus, governmental, fraternal society and church plans. (sec. 421)	Mandatory coverage—all plans subject to the funding requirement with more than 25 participants (of whom at least ten have acquired vested benefits). Voluntary coverage may be obtained by plans subject to the funding requirement, but which are not subject to mandatory coverage. However, they must meet underwriting standards set by the Corporation. (sec. 409)	No provision.
	Basic Protection	
Insurance of all vested benefits, including vested ancillary benefits in the event of plan termination; includes vested benefits acquired both before and after enactment. (sec. 422).	Insurance of benefits which are nonforfeitable according to the minimum vesting schedule in section 203 in effect for such plan termination date; and any contingent rights to ancillary benefits if all contingencies (other than the passage of time) have been satisfied. Includes vested benefits acquired both before and after enactment. (sec. 403).	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Limitations on Amount of Insured Benefit	
The monthly benefits guaranteed to any beneficiary could not exceed the lesser of 50 percent of the participant's average monthly earnings during the participant's highest-paid five years, or $750. The $750 is to be adjusted by changes in Social Security Administration wage base and contribution.	Insures only minimum required vested benefits which may not exceed the actuarial value of a monthly benefit in the form of a single life annuity commencing at age 65 equal to $20 a month per year of credited service. This maximum would be raised annually in accordance with changes in the average taxable wage of all employees, as reported to H.E.W. The Corporation is directed to undertake a study to determine under what conditions it can insure losses of plan benefits over and above those provided in the Act. To the extent that the Corporation determines that losses of the plan, or additional benefits are insurable, the Corporation shall prescribe the terms and conditions of insurance and the premiums to be charged.	No provision.
	Other Limitations	
No benefits would be guaranteed for a plan in effect less than three years, nor would benefits resulting from any plan amendment be guaranteed until the amendment had been in effect for three years. If plan loses its tax-qualified status, no benefits accrued after disqualification shall be guaranteed. (sec. 422).	No benefits would be insured unless the plan had been a member of the Corporation more than five years, although the board of directors may authorize payments for plans terminated with less than five years' membership although in such cases the maximum benefit for plans in existence less than five years would be reduced in accordance with a sliding scale based on years of existence. No benefits resulting from a plan amendment would be insured until the amendment had been in effect for five years. If plan loses its tax-qualified status, no benefits accrued after disqualification shall be guaranteed. (sec. 409).	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Alternate Insurance	
No provision.	The Corporation may establish a Single Employer Optional Trust Fund. Each single employer plan is required to choose whether insurance of its benefits is to be covered by this fund or the Single Employer Primary Trust Fund. Premiums to the Optional Fund will be set by the Corporation and based on the individual plan's insured benefits and any excess of insured benefits over plan assets; premiums shall be based on actual and projected experience. Employers electing coverage under the Single Employer Optional Trust Fund are not subject to any employer liability. (sec. 404, 405, 414).	No provision.
	Employer Liability	
Employers would have limited liability for any loss of covered benefits resulting from their plan's termination. This liability would also extend to successor employers as a result of reorganizations liquidations, mergers, and consolidations; and would be limited to 30 percent of net worth. However, employers (except those remaining in business) would be able to avoid any liability by paying a higher premium to be set by the Corp. In lieu of such a surcharge, employers could elect to gain protection against such liability through a private insurance carrier. The amount of any unpaid liability owed by an employer shall constitute a lien in favor of the government, but junior to any lien for unpaid taxes owed to the government. (sec. 461, 462).	Where employers in terminated plans are not so insolvent, they or their successors-in-interest may be liable for reimbursement of a portion of insurance benefits paid. The liability of employers is to pay 100% of the present value of employer underfunding of the terminated plan (defined to take into account any expected employer contributions) but not more than 50% of the employer's net worth. The Secretary shall make arrangements with employers on equitable terms for the reimbursement of insurance paid. The amount of any unpaid liability owed by an employer shall constitute a lien in favor of the government, but junior to any lien for unpaid taxes owed to the government. (sec. 405). Employers covered by the Single Employer Optional Trust Fund are not subject to liability. (sec. 414). No employer shall be liable by reason of his contributions to or sponsorship of a multiemployer plan. (sec. 414).	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Premium Rates	
The Corp. would be authorized to prescribe insurance premium rates sufficient to fund any guaranteed payments. Separate rate schedules would be maintained for single employer and multi-employer plans. Initially, the premiums (to be collected as a "head tax") would be $1 a year for each individual covered by the plan. For plan years ending after 1976, however, the premium rate would be set by the Corporation according to the cost experience of the program. Congress would have to approve any revised rate schedule. Special provisions are included for multi-employer plans. (sec. 403, 463).	Separate rates to be set by the Corporation for single employer plans and multi-employer plans. Initially, the premium would consist of two parts: 1) a rate of not more than 0.1 percent for single employer (0.025 percent for multi-employer plans) on the excess of insured benefits over plan assets and 2) an additional rate levied (separately for single and multi-employer plans) on all insured benefits to yield an amount equal to the revenue raised by (1). Plans in effect less than six years not required to pay full premium, but in accordance with following schedule: *No. of Years Plan in Effect* — *Percent of Premium To Be Paid* 1 — 50 2 — 60 3 — 70 4 — 80 5 — 90 6 or more — 100 Corporation may issue revised premium rate schedule but such schedule can only be effective thirty days after Congressional aprpoval. (sec. 405, 406).	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Portability	
The Pension Benefit Guaranty Corporation is directed to administer a program designed to facilitate the voluntary transfer of vested pension benefits between participating plans when an individual changes jobs. A Pension Benefit Portability Fund is established. The program will be entirely voluntary requiring the consent of both the employers who have established the plans to or from which pension monies are to be transferred and the employees who have to request such transfers. Workers who change jobs may have their vested retirement credits transferred to the Portability Fund. The worker may maintain these credits in the Fund or alternatively have the amount in his account transferred to a retirement plan of a new employer. (secs. 301–305.)	No provision (other than to study the existing degree of reciprocity and portability among plans).	No special provision. (However, bill contains a provision which is designed to achieve certain advantages of portability. Under a so-called "rollover" provision, individuals will have the right to roll over into individual retirement accounts—without the payment of current tax—complete distributions of amounts contributed under the plan by his employer.)
	Reporting and disclosure	
	Coverage	
The reporting and disclosure requirements apply to all employee benefit plans (regardless of size) although the Secretary of Labor may grant an exemption or provide a variance in the form or manner of reporting or disclosure. However, exempt plans of tax-exempt religious organizations described in section 501(c) of the Internal Revenue Code and plans outside the U.S. for the benefit of non-citizens. Continues the present Welfare and Pension Plan Disclosure Act exemptions of all governmental plans, and plans required under Workmen's Compensation and unemployment compensation disability insurance laws. (sec. 502, 503).	The reporting and disclosure requirements cover all employee benefit plans except governmental plans; church plans (unless they have elected to be covered), plans required under workmen's compensation and unemployment compensation disability insurance laws; plans outside the U.S. for the benefit of non-citizens. Secretary of Labor may grant an exemption from all or part of reporting, disclosure and publication requirements. (sec. 101, 105).	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Disclosure to Plan Participants	
The plan administrator shall furnish (or make available) to every participant upon his enrollment in the plan (and after each major amendment), a summary of the plan's important provisions written in a manner calculated to be understood by the average participant; a description of the benefits, and the circumstances which may result in disqualification or ineligibility. A revised up-to-date summary is to be furnished the participants every three years. The plan administrator is also required to furnish each participant or beneficiary requesting in writing, a complete copy of the plan description or a complete copy of the latest annual report, or both. (sec. 503).	The plan administrator shall make copies of the latest annual report available for examination in the principal office of the administrator. Once each year the plan administrator shall furnish each participant and beneficiary with a description of the plan and a statement of assets and liabilities, receipts and disbursements, the ratio of a assets to liabilities, and such other material as is necessary to summarize annual report. Upon written request, the plan administrator must furnish participants with a complete copy of the latest annual report. (sec. 102, 105, 106).	No provision.
The plan administrator is further required to furnish any participant or beneficiary requesting in writing a statement indicating (1) whether or not he has a nonforfeitable right to a pension benefit, (2) the nonforfeitable benefits which have accrued, or the earliest date they will become nonforfeitable, and (3) the total pension benefits accrued. (sec. 503).	The Secretary may by regulation require that the plan administrator furnish each participant or his surviving beneficiary a statement of the rights of participants and beneficiaries under Title I. (sec. 102).	
	Plan Description	
The description of a plan shall be comprehensive and written in a manner calculated to be understood by the average participant. Also calls for plan description to include a description of the provisions providing for vested benefits. (sec. 502).	Same as Senate-passed bill. (sec. 103).	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Annual Report to the Department of Labor	
Annual report must include: Statement of assets and liabilities; The aggregate cost and value of each security, by issuer; The aggregate cost and value of all other investments separately identifying each investment which exceeds 3 percent of the value of the fund; and each investment in securities or property of any party in interest; The aggregate amount by type of security, of all purchases, sales, redemptions, and exchanges of securities made during the reporting period including a list showing separately for each security the issuer, type and class of security, quantity, and information on price, gain, or loss (similar information also required for investment assets other than securities); A detailed list of and information on each transaction with any party in interest; A list and specific information on each lease with any party in interest or with an individual in default; The ratio of market value of the reserves and assets to the present value of all liabilities for nonforfeitable benefits; and A copy of the most recent actuarial report together with the assumptions used. (sec. 502, 503).	Annual report must include: Statement of assets and liabilities; A schedule containing specific information on assets held for investment aggregated and identified by issuer, borrower, or lessor; Detailed list and information on each transaction with a party in interest; A list of all leases which are in default or are uncollectible; The ratio of the current value of assets to liabilities allocated to each termination priority category; A statement of the amount, if any, by which the assets exceed or fall below the funding requirement; A copy of the applicable actuarial report together with the assumptions used. (sec. 104).	No provision.
	Annual Audit	
Annual report would include the opinion of an independent certified or licensed public accountant based upon an annual audit. (sec. 502).		No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Fiduciary standards	
	Coverage	
Fiduciary requirements apply to all employee benefit plans (regardless of size). However, exempts plans of tax-exempt religious organizations described in section 501 (c) of the Internal Revenue Code and plans outside the U.S. for the benefit of noncitizens. Continues the present Welfare and Pension Plans Disclosure Act exemptions of all governmental plans, and plans required under workmen's compensation and unemployment compensation disability insurance laws. (sec. 501, 511).	Fiduciary requirements cover all private plans except governmental plans; church plans (unless they have elected to be covered), plans required under workmen's compensation and unemployment compensation disability insurance laws; plans outside the U.S. for the benefit of noncitizens. (sec. 101).	No provision.
	Standards of Conduct of Fiduciaries	
A fiduciary shall discharge his duties solely in the interest of the plan participants, and for the exclusive purpose of providing benefits and defraying reasonable administrative expenses. (sec. 511).	Same as Senate-passed bill. (sec. 111).	No provision.
	Liability	
Any fiduciary who breaches any of the responsibilities, obligations, or duties imposed by this act is personally liable to the fund for any losses resulting from such breach. (sec. 511).	Same as Senate-passed bill (Trustees and plan administrators not liable for acts of investment advisers). (sec. 111).	No provision.
	Prohibited Transactions	
Under the amendments to the Internal Revenue Code and the Welfare and Pension Plans Disclosure Act, a fiduciary would be prohibited from dealing in his own interest, or engaging in a transaction with a party in interest which constitutes a (1) sale or exchange, or leasing, of any property, (2) lending of money or other extension of credit, (3) furnishing of goods, services, or facilities, or (4) transfer to or use of any assets of the trust. (sec. 511).	A fiduciary would be prohibited from dealing with the assets for his own account, acting in the adverse interests of the plan participants, or receiving any consideration for his own personal account. The transfer or use of any property by a party in interest (except for no less than adequate consideration) would be prohibited. The acquisition of any property from a party in interest for no more than adequate consideration also would be prohibited. (sec. 111).	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
The prohibitions would not apply to any loan to parties in interest who are participants or beneficiaries of the plan if such loans (1) are available to all participants on a nondiscriminatory basis, (2) are not made available to highly compensated employees in an amount greater than that made available to other employees, (3) bear a reasonable rate of interest, and (4) are adequately secured. Similarly, a fiduciary would not be prohibited from receiving any reasonable compensation for services rendered. Several other exemptions would be provided from the list of prohibited transactions. For instance, loans and the leasing of property to a party-in-interest under a binding contract in effect on August 21, 1973 would be permitted for ten years if it remains at least as favorable to the trust as an arms-length transaction. The sale disposition, or acquisition of this property during the ten year period must be for fair market value. Secretaries of Labor and Treasury given joint rulemaking authority regarding exemptions and administration of certain prohibited transaction provisions, sec. 511, 521, 522).	The prohibitions would not apply to (1) receiving any benefit to which he may be entitled as a participant or beneficiary, (2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly incurred, or (3) serving as a fiduciary in addition to being an officer, employee, or other representative of a party in interest. (sec. 111).	
	Prudent Man Rule	
Fiduciaries must act as a prudent man would in a like capacity and familiar with such matters. (sec. 511).	Fiduciary must use the same care, skill and prudence as a prudent man acting in a like capacity and familiar with such matters. (sec. 111).	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Limitation on Investments in Employer Securities	
No more than 7 percent of a pension fund could be invested in employer securities. Plans would have to divest themselves of any excess within ten years. This limitation, however generally would not apply to profit-sharing and stock bonus plans. (sec. 511).	Fiduciaries must diversify the investments so as to minimize the risk of large losses, unless under the circumstances it is prudent not to do so. This generally does not apply to profit-sharing, stock bonus, or thrift and savings plans. In order to provide for an orderly disposition of investments, a fiduciary may in his discretion effect the disposition of such investments within three years of enactment. (sec. 111 and 115).	No provision.
	Enforcement	
The Secretary of Labor would have primary responsibility for enforcing rules with respect to fiduciaries. Where fiduciaries breach these standards of conduct, the Secretary of Labor (and participants and beneficiaries of the plan) may bring civil actions to impose liability on the fiduciaries for losses incurred by the plan or profits which they have gained as a result of the breach. Civil actions would also be available to enjoin fiduciaries or otherwise remedy a breach of conduct. (sec. 692).	Civil actions to enforce the fiduciary responsibility provisions may be brought by the Secretary of Labor, or by a participant, beneficiary, or fiduciary for appropriate relief. (sec. 503).	No provision.
	Excise Tax	
The Internal Revenue Service would have primary responsibility for enforcing prohibited transactions with respect to parties-in-interest through an excise tax. The excise tax is at two levels. Initially, parties in interest who participate in a prohibited transaction would be subject to a tax of 5 percent of the amount involved in the transaction per year. A second tax of 100 percent would be imposed if the transaction was not corrected after notice from the Internal Revenue Service that the 5 percent tax was due. (sec. 522).	No provision.	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Prohibition Against Certain Individuals Holding Office	
Persons convicted of certain crimes could not serve as an administrator, trustee, or officer of the plan. (sec. 511).	Same as Senate-passed bill. (sec. 113).	No provision.
	Effective Date	
All rules governing fiduciary standards except prohibited transactions would be effective on January 1, 1974. The prohibited transaction rules would be effective one year later on January 1, 1975 (sec. 521).	Six months after enactment. (sec. 115).	No provision.
	b. Subchapter S, Corporation Plans	
Repeals present tax treatment of qualified pension plans for shareholder-employees of subchapter S corporations. Shareholder-employees of subchapter S corporations are subject to the same limitations as corporate employees. (sec. 702.)	No provision.	Limitations on contributions or benefits applicable to self-employed individuals also apply to a shareholder employee (an employee who owns more than 5 percent of the outstanding stock of the corporation) of a Subchapter S corporation. (sec. 2001.)
	c. Corporate Plans	
Imposes limitations on contributions which may be made or the benefits which may be paid under qualified corporate plans for all employees.	No provision.	Imposes limitations on contributions or benefits for all employees. Permits annual adjustments for cost-of-living increases.
	(1) Defined Benefit Plans	
No deduction is allowable for contributions in excess of those necessary to fund a basic benefit in the form of a straight life annuity commencing at age 65 in excess of 75 percent of the participant's average high-three year compensation from the employer, not in excess of the first $100,000 a year. (sec. 702, 706.)	No provision.	The annual benefit under defined benefit plans cannot exceed 100 percent of the participant's average compensation for his highest 3 years of earnings (regardless of the age at which the benefits start) or $75,000 beginning at age 55 or later, whichever is less. The limitation does not apply to retirement benefits which do not exceed $10,000 for the plan year or for any prior plan year (if the employer has not maintained a defined contribution plan in which the participant was covered.)

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Retirement Savings, Limits on Contributions and Benefits, and Other Tax Provisions	
	Individual retirement savings plans	
Employees who are not covered under a qualified plan (including an H.R. 10 plan), a government plan, or a tax exempt organization annuity plan are allowed to establish their own qualified retirement accounts and take an annual income tax deduction for contributions for an amount up to the greater of $1,000 (not in excess of earned income), or 15 percent of earned income, up to $1,500 (sec. 701).	No provision.	Employees who are not covered under a qualified plan (including an H.R. 10 plan), a government plan, or a tax exempt organization annuity plan are allowed to establish their own qualified retirement accounts and take an annual income tax deduction for contributions up to $1,500 or 20 percent of earned income, whichever is the lesser. (sec. 2002).
	Limits on contributions and benefits	
	a. Self-employed plans	
Allows a self-employed individual to take an annual income tax deduction on his own behalf for contributions to a qualified retirement plan (H.R. 10 plan) equal to an amount which is the greater of $750 (but not in excess of earned income) or 15 percent of earned income up to $7,500. A $100,000 limitation is provided for the portion of earned income which may be taken into account in determining contributions or benefits. Also, a formula is provided which would allow the self-employed, in effect, to translate the 15 percent—$7,500 limitation on contributions into limitations on benefits which they could receive under a defined benefit plan. (sec. 704).	No provision.	Same as Senate—passed bill (sec. 2001).

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	(2) Defined contribution plan	
The corporation is permitted to make deductible contributions sufficient to fund a pension for the employee on this same 75 percent of average high-three year compensation basis. Procedures to be followed in this situation take into account contributions accumulated in prior years, and provide that contributions made in current and subsequent years can provide any additional amounts necessary (together with earnings on those amounts at a standard 6 percent interest rate) to bring the pension benefits up to the level referred to above. (sec. 702, 706).	No provision.	The sum of the employer's contributions for the employee, a specified portion of the employee's own contributions, and any forfeiture allocated to the employee cannot exceed 25 percent of the employee's compensation or $25,000 annually, whichever is less. (sec. 2003).
	(3) Coverage under both plans	
The maximum benefit payable under the defined benefit plan would have to be reduced in proportion to the amount of the benefit which was funded through the defined contribution plan. (sec. 702).	No provision.	Provides an overall limit to coordinate the two limits outlined above for an individual covered by both a defined benefit plan and a defined contribution plan established by his employer. The sum of (1) the percentage utilization of the maximum limit under the defined benefit plan and (2) the percentage utilization of the maximum limit under the defined contribution plan cannot exceed 140 percent. (sec. 2003).
	Lump Sum Distributions	
The portion of a lump-sum distribution representing pre-1974 value is to be taxed as capital gain. The post-1973 portion of a distribution is to be taxed as ordinary income but with 15-year forward averaging. The ordinary income portion will be taxed under a separate tax rate schedule—the schedule applicable to single persons. A special minimum distribution allowance is provided under the separate tax rate schedule for lower income individuals. (sec. 703).	No provision.	Same as Senate-passed bill, except that 10 year averaging is provided for the portion of the lump-sum distribution which is taxed as ordinary income under the separate tax rate schedule (sec. 2004).

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Salary Reduction Plans	
Amounts contributed under a salary reduction plan prior to January 1, 1974 are considered to be employer contributions. Thereafter, such contributions will be treated as employee contributions and will be included in the employee's income. (sec. 706)	No provision.	Directs the Secretary of Treasury to withdraw the proposed salary reduction regulations issued December 6, 1972. No other regulations may be issued in proposed form before January 1, 1975, or in final form before March 16, 1976. Until issuance of final regulations, such plans are to be administered as they were before January 1, 1972. (sec. 2005)
	General	
	Joint and Survivor Option	
All plans would be required to offer a joint and survivor option of at least half the amount payable to the participant during the joint lives of the participant and his spouse. The option could not be waived unless the participant affirmatively waived it, after receiving a written explanation concerning the terms of the annuity. (sec. 261)	Essentially the same as Senate-passed bill, but requirement for joint and survivor annuity applies only when participant and spouse have been married throughout the five years prior to annuity starting date. (sec. 204)	Same as Title I.
	Recordkeeping for Vested Benefits	
To assist employees in keeping track of any vested retirement credits, each plan (including Federal, state and local government plans) is required to report annually to the Secretary of Treasury the names of individuals who leave the plan with vested benefits and the amount of such vested benefits. (A statement setting forth this information would also have to be furnished to the individual.) This information would then be transmitted to and maintained by the Social Security Administration. Upon an individual's application for social security retirement benefits, the Social Security Administration is to furnish him with information regarding any vested pension benefits that he may have accumulated over his working career. (sec. 151, 152)	Essentially the same as Senate-passed bill except that 1) government and church plans are covered only on a voluntary basis, 2) information is to be furnished to Secretary of Labor and then transmitted to the Social Security Administration, and 3) regulations to carry out this provision may be prescribed by the Secretary of Labor with approval of Secretary of Treasury. (sec. 106)	Essentially the same as Senate-passed bill except that 1) government and church plans are covered only on a voluntary basis, and 2) regulations to carry out this provision may be prescribed by the Secretary of Treasury with approval of Secretary of Labor. (sec. 1031, 1032)

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PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Preemption of State Law	
The provisions of this Act or the WPPDA supersede all state law as they relate to the subject matters covered by these two acts (i.e., vesting, funding, termination insurance, portability, reporting and fiduciary standards). (sec. 699)	The Act supersedes all state and local laws relating to fiduciary standards, reporting, disclosure, vesting, and funding (except for civil action by a participant or beneficiary to recover benefits due or to clarify rights to future benefits). No employee benefit plan subject to Title I (except plans primarily providing death benefits) can be considered an insurance company for purposes of State regulation. (sec. 514)	No provision.
	Enforcement	
Departments of Treasury and Labor both given responsibility for enforcement. Responsibility varies with different titles of the bill. Treasury Department enforcement authority includes the power to compel payment of taxes, already contained in the Tax Code, as well as new authority for an excise tax on any employer failing to fund the plan at minimum required amounts.	Department of Labor given responsibility for enforcement authority. Enforcement authority is exercised through the certification of a registration statement which each plan subject to the vesting and funding provisions must file. If the Secretary determines that a plan is not qualified (or no longer qualified), he is required to notify the administrator of the deficiency. If not corrected, the Secretary of Labor may cancel (or deny) the certificate of registration and may petition the appropriate U.S. District Court for an order requiring the plan to comply. (sec. 503, 512)	Department of Treasury given responsibility for enforcement. Enforcement authority includes power to compel payment of taxes, already contained in the Tax Code, as well as new authority for an excise tax on any employer failing to fund the plan at minimum required amounts. (sec. 1013)
Secretary of Labor is given authority to petition appropriate U.S. District Court for an order requiring corrective action whenever he believes an employee benefit fund is being administered in violation of this Act. (sec. 692)		
Civil actions for appropriate relief (legal or equitable) may also be brought by a participant or beneficiary to redress or restrain violations of fiduciary duty. (sec. 693)	Civil actions may be brought by a participant or beneficiary for appropriate relief, to recover benefits, or to clarify rights. (sec. 503)	

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Variances From Requirements Under the Act	
No provision.	For any type of plan, Secretary of Labor may prescribe an alternate method of meeting participation, vesting, funding, or plan termination insurance requirements if compliance with Act would cause substantial risk of plan termination or substantial reduction in benefits. (sec. 501)	For any multi-employer plan, Secretary of Labor may, for a limited period of time, prescribe an alternate method of meeting certain requirements of Title II (vesting of employer contributions, benefit accruals, charges and credits to funding standard account and charges in funding method or in plan year) if compliance with Act would cause substantial risk of plan termination or substantial reduction in benefits. (sec. 1015)
	Investigations	
The Secretary of Labor may make appropriate investigations when he believes it necessary to determine whether any person has violated the provisions of this act or the Welfare and Pension Plans Disclosure Act. He may enter such places, inspect such records and accounts, and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation. (The Secretary of Labor is to make arrangements with the Secretary of Treasury so as to preclude a duplication of effort with regard to investigation of violations relating to fiduciaries.)	The Secretary of Labor is authorized to make an investigation in order to determine if any person has violated any of the provisions of Title I and may, where he has reasonable cause, enter such places, inspect such records and accounts, and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation. (sec. 503)	No provision.
	Interference with Rights	
It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against any participant or beneficiary for exercising any right under the pension plan. It shall also be unlawful to use fraud, force, intimidation, etc. for the purpose of interfering with the exercise of any right under the plan, this act, or the Welfare and Pension Plans Disclosure Act. (sec. 699)	Same as Senate-passed bill. (sec. 510–511)	A plan will not be considered to meet the vesting requirements if there has been a pattern of abuse under the plan such as a firing of employees before their accrued benefits vest. (sec. 1012)

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
	Arbitration	
Each plan shall provide a procedure for the fair and just review of any disputes between the administrator of the plan and any participant or beneficiary and an opportunity after such review and a decision by the administrator for the arbitration of such disputes. A participant or beneficiary may bring a civil action in lieu of submitting the dispute to arbitration under the plan. The cost of arbitration shall be paid by the plan unless the arbitrator determines that the allegations are frivolous. The Secretary of Labor shall inform participants of their rights and is authorized to furnish assistance in obtaining such rights. (sec. 691)	No provision.	No provision.
	Studies	
Secretary of Labor given broad authority for studies relating to the effect of new law, the role of private pensions in meeting retirement, security needs of the Nation, alternative methods of providing additional retirement security, and the operation of private pension plans. Secretay also directed to undertake special study of the sufficiency of provisions of the new law for high mobility employees.	The Secretary of Labor is directed to undertake research studies relating to pension plans, including but not limited to (1) the effects of Title I upon the provisions and costs of pension plans (2) the role of private pensions in meeting the economic security needs of the Nation, and (3) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial characteristics and practices, and methods of encouraging the growth of the private pension system. (sec. 502)	No provision.

PRIVATE PENSION REFORM LEGISLATION—COMPARISON OF SENATE-PASSED AND HOUSE-PASSED VERSIONS OF H.R. 2—Continued

SENATE	HOUSE: TITLE I	HOUSE: TITLE II
The Secretary of Treasury is directed to study the extent to which Federal and State pension plans are adequately funded, and determine whether it would be appropriate to require such plans to comply with the same minimum standards applicable to private plans. (sec. 281)	The Committee on Education and Labor and the Comimttee on Ways and Means of the House of Representatives shall study retirement plans established by Federal, State, and local governments including the (1) adequacy of existing levels of participation, vesting, and financial arrangements, (2) existing fiduciary standards, (3) the unique circumstances affecting mobility of government employees and individuals employed under Federal procurement, construction, or research contracts or grants, and (4) the necessity for Federal legislation and standards with respect to such plans. (sec. 502)	Same as Title I. (sec. 1023)
	Advisory Council	
A broadly-representative Advisory Council on Employee Welfare and Pension Benefit Plans consisting of 21 members appointed by the Secretary of Labor would be established, and would include 3 persons representing those receiving benefits from a private pension plan. (sec. 506)	A broadly-representative Advisory Council on Employee Welfare and Pension Benefit Plans consisting of 15 members appointed by the Secretary of Labor would be established. (sec. 114)	No provision.

* * * * * * *

[From the Congressional Record—House, April 2, 1974]

Appointment of Conferees on H.R. 2, Employee Security Benefit Act

Mr. Perkins. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2) to provide for pension reform, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The Speaker. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and the Chair appoints as managers on the part of the House the following Members: On title I of the House bill, and modifications thereof which have been committed to conference: Messrs. Perkins, Thompson of New Jersey, Dent, Burton, Quie, Erlenborn, and Sarasin; and on title II of the House bill, and modifications thereof which have been committed to conference: Messrs. Ullman, Burke of Massachusetts, Mrs. Griffiths, Messrs. Rostenkowski, Schneebeli, Collier, and Broyhill of Virginia.

Conference Sessions

The conferees met in executive session on May 14, 15, 16, 21, 22, 30; June 4, 5, 10, 11, 12, 13, 17, 18, 19, 20, 24, 26, 27; and July 31, 1974 (20 days), before agreeing on the differences of the two houses and agreeing to file conference reports.

[From the Congressional Record—House, Aug. 12, 1974]

CONFERENCE REPORT ON H.R. 2, PENSION REFORM

Mr. PERKINS submitted the following conference report and statement of the bill (H.R. 2) to provide pension reform:

93D CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 93–1280

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

AUGUST 12, 1974.—Ordered to be printed

Mr. PERKINS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2) to provide for pension reform, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Employee Retirement Income Security Act of 1974".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle A—General Provisions

Sec. 2. Findings and declaration of policy.
Sec. 3. Definitions.
Sec. 4. Coverage.

Subtitle B—Regulatory Provisions

Part 1—Reporting and Disclosure

Sec. 101. Duty of disclosure and reporting.
Sec. 102. Plan description and summary plan description.
Sec. 103. Annual reports.
Sec. 104. Filing with Secretary and furnishing information to participants
Sec. 105. Reporting of participant's benefit rights.
Sec. 106. Reports made public information.
Sec. 107. Retention of records.
Sec. 108. Reliance on administrative interpretations.
Sec. 109. Forms.
Sec. 110. Alternative methods of compliance.
Sec. 111. Repeal and effective date.

Part 2—Participation and Vesting

Sec. 201. Coverage.
Sec. 202. Minimum participation standards.
Sec. 203. Minimum vesting standards.
Sec. 204. Benefit accrual requirements.
Sec. 205. Joint and survivor annuity requirement.
Sec. 206. Other provisions relating to form and payment of benefits.
Sec. 207. Temporary variances from certain vesting requirements.
Sec. 208. Mergers and consolidations of plans or transfers of plan assets.
Sec. 209. Recordkeeping and reporting requirements.
Sec. 210. Plans maintained by more than one employer, predecessor plans, and employer groups.
Sec. 211. Effective dates.

Part 3—Funding

Sec. 301. Coverage.
Sec. 302. Minimum funding standards.
Sec. 303. Variance from minimum funding standard.
Sec. 304. Extension of amortization periods.
Sec. 305. Alternative minimum funding standard.
Sec. 306. Effective date.

Part 4—Fiduciary Responsibility

Sec. 401. Coverage.
Sec. 402. Establishment of plan.
Sec. 403. Establishment of trust.
Sec. 404. Fiduciary duties.
Sec. 405. Liability for breach of co-fiduciary.
Sec. 406. Prohibited transactions.
Sec. 407. 10 percent limitation with respect to acquisition and holding of employer securities and employer real property by certain plans.
Sec. 408. Exemptions from prohibited transactions.
Sec. 409. Liability for breach of fiduciary duty.
Sec. 410. Exculpatory provisions; insurance.
Sec. 411. Prohibitation against certain persons holding certain positions.
Sec. 412. Bonding.
Sec. 413. Limitation on actions.
Sec. 414. Effective date.

Part 5—Administration and Enforcement

Sec. 501. Criminal penalties.
Sec. 502. Civil enforcement.
Sec. 503. Claims procedure.

Sec. 504. Investigative authority.
Sec. 505. Regulations.
Sec. 506. Other agencies and departments.
Sec. 507. Administration.
Sec. 508. Appropriations.
Sec. 509. Separability provisions.
Sec. 510. Interference with rights protected under Act.
Sec. 511. Coercive interference.
Sec. 512. Advisory Council.
Sec. 513. Research, studies, and annual report.
Sec. 514. Effect on other laws.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS

Sec. 1001. Amendment of Internal Revenue Code of 1954.

Subtitle A—Participation, Vesting, Funding, Administration, Etc.

PART I—PARTICIPATION, VESTING, AND FUNDING

Sec. 1011. Minimum participation standards.
Sec. 1012. Minimum vesting standards.
Sec. 1013. Minimum funding standards.
Sec. 1014. Collectively bargained plans, etc.
Sec. 1015. Definitions and special rules.
Sec. 1016. Conforming and clerical amendments.
Sec. 1017. Effective dates and transitional rules.

PART II—CERTAIN OTHER PROVISIONS RELATING TO QUALIFIED RETIREMENT PLANS

Sec. 1021. Additional plan requirements.
Sec. 1022. Miscellaneous provisions.
Sec. 1023. Retroactive changes in plan.
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PART III—REGISTRATION AND INFORMATION

Sec. 1031. Registration and information.
Sec. 1032. Duties of Secretary of Health, Education, and Welfare.
Sec. 1033. Reports by actuaries.
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PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

Sec. 1041. Tax Court procedure.

PART V—INTERNAL REVENUE SERVICE

Sec. 1051. Establishment of Office.
Sec. 1052. Authorization of appropriations.

Subtitle B—Other Amendments to the Internal Revenue Code Relating to Retirement Plans

Sec. 2001. Contributions on behalf of self-employed individuals and shareholder-employees.
Sec. 2002. Deduction for retirement savings.
Sec. 2003. Prohibited transactions.
Sec. 2004. Limitations on benefits and contributions.
Sec. 2005. Taxation of certain lump sum distributions.
Sec. 2006. Salary reduction regulations.
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TITLE III—JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

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Sec. 3001. Procedures in connection with the issuance of certain determination letters by the Secretary of the Treasury.
Sec. 3002. Procedures with respect to continued compliance with requirements relating to participation, vesting, and funding standards.
Sec. 3003. Procedures in connection with prohibited transactions.
Sec. 3004. Coordination between the Department of the Treasury and the Department of Labor.

Subtitle B—Joint Pension Task Force; Studies

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Sec. 3021. Establishment.
Sec. 3022. Duties.

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Sec. 3031. Congressional study.
Sec. 3032. Protection for employees under Federal procurement, construction, and research contracts and grants.

Subtitle C—Enrollment of Actuaries

Sec. 3041. Establishment of Joint Board for the enrollment of actuaries.
Sec. 3042. Enrollment by Joint Board.
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TITLE IV—PLAN TERMINATION INSURANCE

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Sec. 4001. Definitions.
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Sec. 4061. Amounts payable by the corporation.
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Sec. 4064. Liability of employers on termination of plan maintained by more than one employer.
Sec. 4065. Annual report of plan administrator.
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Subtitle E—Amendments to Internal Revenue Code of 1954; Effective dates

Sec. 4081. Amendments to Internal Revenue Code of 1954.
Sec. 4082. Effective date; special rules.

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle A—General Provisions

FINDINGS AND DECLARATION OF POLICY

Sec. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans is carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and report-

ing to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

DEFINITIONS

SEC. 3. For purposes of this title:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan was established or maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

(2) The terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(A) provides retirement income to employees, or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

(6) The term "employee" means any individual employed by an employer.

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

(9) The term "person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

(10) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone. The term "United States" when used in the geographic sense means the States and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act.

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 per cent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 per cent for subparagraphs (E) and (G) and lower than 10 per cent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are take into account.

(15) The term "relative" means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

(16) (A) The term "administrator" means—

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term "plan sponsor" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(17) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(18) The term "adequate consideration" when used in part 4 means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, or which has been listed for more than 1 month (at the time of such sale or purchase) on an electronic quotation system administered by a national securities association registered under such Act, or (ii) if the security is not traded on such a national securities exchange, or so listed on such an electronic quotation system, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

(19) The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan contains a provision described in section 203(a)(3).

(20) The term "security" has the same meaning as such term has under section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1)).

(21)(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 405(c)(1)(B).

(B) If any money or other property of an employee benefit plan is invested in securities issued by an investment company registered under the Investment Company Act of 1940, such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this title,

except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

(22) The term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefit under the plan which the Secretary of the Treasury finds to be a benefit described in section 204(b)(1)(G).

(23) The term "accrued benefit" means—

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided in section 204(c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(B) in the case of a plan which is an individual account plan, the balance of the individual's account.

(24) The term "normal retirement age" means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

(25) The term "vested liabilities" means the present value of the immediate or deferred benefits available at normal retirement age for participants and their beneficiaries which are nonforfeitable.

(26) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by a trustee or a named fiduciary (as defined in section 402(a)(2)) pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination.

(27) The term "present value", with respect to a liability, means the value adjusted to reflect anticipated events. Such adjustments shall conform to such regulations as the Secretary of the Treasury may prescribe.

(28) The term "normal service cost" or "normal cost" means the annual cost of future pension benefits and administrative expenses as-

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signed, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(29) The term "accrued liability" means the excess of the present value, as of a particular valuation date of a pension plan, of the projected future benefit costs and administrative expenses for all plan participants and beneficiaries over the present value of future contributions for the normal cost of all applicable plan participants and beneficiaries. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(30) The term "unfunded accrued liability" means the excess of the accrued liability, under an actuarial cost method which so provides, over the present value of the assets of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(31) The term "advance funding actuarial cost method" or "actuarial cost method" means a recognized actuarial technique utilized for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

(32) The term "governmental plan" means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act (59 Stat. 669).

(33) (A) The term "church plan" means (i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954, or (ii) a plan described in subparagraph (C).

(B) The term "church plan" (notwithstanding the provisions of subparagraph (A)) does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1954), or

(ii) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501 of the Internal Revenue Code of 1954.

(C) Notwithstanding the provisions of subparagraph (B)(ii), a plan in existence on January 1, 1974, shall be treated as a "church plan" if it is established and maintained by a church or convention or association of churches for its employees and employees of one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501 of the Internal Revenue Code of 1954. The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence of this subparagraph shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

(34) The term "individual account plan" or "defined contribution plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains, and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(35) The term "defined benefit plan" means a pension plan other than an individual account plan; except that a pension plan which is not an individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant—

(A) for the purposes of section 202, shall be treated as an individual account plan, and

(B) for the purposes of paragraph (23) of this section and section 204, shall be treated as individual account plans to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

(36) The term "excess benefit plan" means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Internal Revenue Code of 1954 on plans to which that section applies, without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.

(37)(A) The term "multiemployer plan" means a plan—

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to one or more collective-bargaining agreement between employee organization and more than one employer,

(iii) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions

made under the plan for that plan year by all employers making such contributions.

(iv) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who had employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

(v) which satisfies such other requirements as the Secretary may by regulations prescribe.

(B) For purposes of this paragraph—

(i) if a plan is a multiemployer plan within the meaning of subparagraph (A) for any plan year, clause (iii) of subparagraph (A) shall be applied by substituting "75 percent" for "50 percent" for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions, and

(ii) all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(e)(3)(C) of such Code) shall be deemed to be one employer.

(38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 402(a)(2))—

(A) who has the power to manage, acquire, or dispose of any asset of a plan;

(B) who is (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is a bank, as defined in that Act; or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

(C) has acknowledged in writing that he is a fiduciary with respect to the plan.

(39) The terms "plan year" and "fiscal year of the plan" mean with respect to a plan, calendar, policy, or fiscal year on which the records of the plan are kept.

COVERAGE

SEC. 4. (a) Except as provided in subsection (b) and in sections 201, 301, and 401, this title shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this title shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 3(32);

(2) such plan is a church plan (as defined in section 3(33)) with respect to which no election has been made under section 410(d) of the Internal Revenue Code of 1954;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 3(36)) and which is unfunded.

Subtitle B—Regulatory Provisions

Part I—Reporting and Disclosure

DUTY OF DISCLOSURE AND REPORTING

Sec. 101. (a) The administrator of each employee benefit plan shall cause to be furnished in accordance with section 104(b) to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan—

(1) a summary plan description described in section 102 (a)(1); and

(2) the information described in sections 104(b)(3) and 105 (a) and (c).

(b) The administrator shall, in accordance with section 104(a), file with the Secretary—

(1) the summary plan description described in section 102 (a)(1);

(2) a plan description containing the matter required in section 102(b);

(3) modifications and changes referred to in section 102(a) (2);

(4) the annual report containing the information required by section 103; and

(5) terminal and supplementary reports as required by subsection (c) of this section.

(c)(1) Each administrator of an employee pension benefit plan which is winding up its affairs (without regard to the number of participants remaining in the plan) shall, in accordance with regulations prescribed by the Secretary, file such terminal reports as the Secretary may consider necessary. A copy of such report shall also be filed with the Pension Benefit Guaranty Corporation.

(2) The Secretary may require terminal reports to be filed with regard to any employee welfare benefit plan which is winding up its affairs in accordance with regulations promulgated by the Secretary.

(3) The Secretary may require that a plan described in paragraph (1) or (2) file a supplementary or terminal report with the annual report in the year such plan is terminated and that a copy of such supplementary or terminal report in the case of a plan described in paragraph (1) be also filed with the Pension Benefit Guaranty Corporation.

(d) Cross Reference.—

For regulation relating to coordination of reports to the Secretaries of Labor and the Treasury, see section 3004.

PLAN DESCRIPTION AND SUMMARY PLAN DESCRIPTION

SEC. 102. (a)(1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 104(b). The summary plan description shall include the information described in subsection (b), shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. Any material modification in the terms of the plan and any change in the information required under subsection (b) shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 104(b)(1).

(2) A plan description (containing the information required by subsection (b)) of any employee benefit plan shall be prepared on forms prescribed by the Secretary, and shall be filed with the Secretary as required by section 104(a)(1). Any material modification in the terms of the plan and any change in the information described in subsection (b) shall be filed in accordance with section 104(a)(1)(D).

(b) The plan description and summary plan description shall contain the following information: The name and type of administration of the plan; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 503 of this Act).

ANNUAL REPORTS

Sec. 103. (a)(1)(A) An annual report shall be published with respect to every employee benefit plan to which this part applies. Such report shall be filed with the Secretary in accordance with section 104 (a), and shall be made available and furnished to participants in accordance with section 104(b).

(B) The annual report shall include the information described in subsections (b) and (c) and where applicable subsections (d) and (e) and shall also include—

(i) a financial statement and opinion, as required by paragraph (3) of this subsection, and

(ii) an actuarial statement and opinion, as required by paragraph (4) of this subsection.

(2) If some or all of the information necessary to enable the administrator to comply with the requirements of this title is maintained by—

(A) an insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account,

(B) a bank or similar institution which holds some or all of the assets of the plan in a common or collective trust or a separate trust, or custodial account, or

(C) a plan sponsor as defined in section 3(16)(B),

such carrier, organization, bank, institution, or plan sponsor shall transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year (or such other date as may be prescribed under regulations of the Secretary).

(3)(A) Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(3) of this section and the summary material required under section 104(b)(3) present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report. In a case where a plan is not required to file an annual

report, the requirements of this paragraph shall not apply. In a case where by reason of section 104(a)(2) a plan is required only to file a simplified annual report, the Secretary may waive the requirements of this paragraph.

(B) In offering his opinion under this section the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b)(3)(G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(D) For purposes of this title, the term "qualified public accountant" means—

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

(4)(A) The administrator of an employee pension benefit plan subject to the reporting requirement of subsection (d) of this section shall engage, on behalf of all plan participants, an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section. In a case where a plan is not required to file an annual report, the requirement of this paragraph shall not apply, and, in a case where by reason of section 104(a)(2), a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section—

(i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

(ii) represent his best estimate of anticipated experience under the plan.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of this title, the term "enrolled actuary" means an actuary enrolled under subtitle C of title III of this Act.

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under section 103(b) as to which any qualified public accountant has expressed an opinion, if he so states his reliance.

(b) An annual report under this section shall include a financial statement containing the following information:

(1) With respect to an employee welfare benefit plan: a statement of assets and liabilities; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of any significant changes in plan benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of such pension plan.

(3) With respect to all employee benefit plans, the statement required under paragraph (1) or (2) shall have attached the following information in separate schedules:

(A) a statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and

his relationship or any other party in interest to the plan, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this subsection; and

(H) a schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify

the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction. For purposes of the preceding sentence, the term "reportable transaction" means a transaction to which the plan is a party if such transaction is—

(i) a transaction involving an amount in excess of 3 percent of the current value of the assets of the plan;

(ii) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a plan year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the plan;

(iii) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the plan year exceeds 3 percent of the current value of the assets of the plan; or

(iv) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the plan year respecting a security is required to be reported by reason of clause (i).

(4) The Secretary may, by regulation, relieve any plan from filing a copy of a statement of assets and liabilities (or other information) described in paragraph (3)(G) if such statement and other information is filed with the Secretary by the bank or insurance carrier which maintains the common or collective trust or separate account.

(c) The administrator shall furnish as a part of a report under this section the following information:

(1) The number of employees covered by the plan.

(2) The name and address of each fiduciary.

(3) Except in the case of a person whose compensation is minimal (determined under regulations of the Secretary) and who performs solely ministerial duties (determined under such regulations), the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of trustee, qualified public accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian.

(5) Such financial and actuarial information including but not limited to the material described in subsections (b) and (d) of this section as the Secretary may find necessary or appropriate.

(d) With respect to an employee pension benefit plan (other than (A) a profit sharing, savings, or other plan, which is an individual account plan, (B) a plan described in section 301(b), or (C) a plan described both in section 4021(b) and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 301(a)) an annual report under this section for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) The date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed.

(2) The date and amount of the contribution (or contributions) received by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) The following information applicable to the plan year for which the report is filed: the normal costs, the accrued liabilities, an identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to determine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 302.

(4) The number of participants and beneficiaries, both retired and nonretired, covered by the plan.

(5) The current value of the assets accumulated in the plan, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 302 and a statement explaining the basis of such valuation of present value of assets.

(6) The present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories as set forth in section 4044 of this Act, and the actuarial assumptions used in these computations. The Secretary shall establish regulations defining (for purposes of this section) "termination priority categories" and acceptable methods, including approximate methods, for allocating the plan's liabilities to such termination priority categories.

(7) A certification of the contribution necessary to reduce the accumulated funding deficiency to zero.

(8) A statement by the enrolled actuary—

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the requirements of section 302 (relating to reasonable actuarial assumptions and methods) have been complied with.

(9) A copy of the opinion required by subsection (a)(4).

(10) Such other information regarding the plan as the Secretary may by regulation require.

(11) Such other information as may be necessary to fully and farily disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

(e) If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the fiscal year and enumerating—

(1) the premium rate of subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization: dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service, or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

FILING WITH SECRETARY AND FURNISHING INFORMATION TO PARTICIPANTS

SEC. 104. (a)(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary—

(A) the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing);

(B) the plan description within 120 days after such plan becomes subject to this part and an updated plan description, no more frequently than once every 5 years, as the Secretary may require;

(C) a copy of the summary plan description at the time such summary plan description is required to be furnished to participants and beneficiaries pursuant to subsection (b)(1)(B) of this section; and

(D) modifications and changes referred to in section 102(a)(2) within 60 days after such modification or change is adopted or occurs, as the case may be.

The Secretary shall make copies of such plan descriptions, summary plan descriptions, and annual reports available for inspection in the public document room of the Department of Labor. The administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

(2)(A) With respect to annual reports required to be filed with the Secretary under this part, he may by regulation prescribe simplified annual reports for any pension plan which covers less than 100 participants. In addition, and without limiting the foregoing sentence, the Secretary may waive or modify the requirements of section 103(d)(6) in such cases or categories of cases as to which he finds that (i) the interests of the plan participants are not harmed thereby and (ii) the expense of compliance with the specific requirements of section 103(d)(6) is not justified by the needs of the participants, the Pension Benefit Guaranty Corporation, and the Department of Labor for some portion or all of the information otherwise required under section 103(d)(6).

(B) Nothing contained in this paragraph shall preclude the Secretary from requiring any information or data from any such plan to which this part applies where he finds such data or information is necessary to carry out the purposes of this title nor shall the Secretary be precluded from revoking provisions for simplified reports for any such plan if he finds it necessary to do so in order to carry out the objectives of this title.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this title, or may provide for simplified reporting and disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans.

(4) The Secretary may reject any filing under this section—

(A) if he determines that such filing is incomplete for purposes of this part; or

(B) if he determines that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 103(a)(3)(A) or section 103(a)(4)(B).

(5) If the Secretary rejects a filing of a report under paragraph (4) and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the Secretary makes his determination under paragraph (4) to reject the filing, and if the Secretary deems

it in the best interest of the participants, he may take any one or more of the following actions—

(A) retain an independent qualified public accountant (as defined in section 103(a)(3)(D)) on behalf of the participants to perform an audit,

(B) retain an enrolled actuary (as defined in section 103 (a)(4)(C) of this Act) on behalf of the plan participants, to prepare an actuarial statement,

(C) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this part, or

(D) take any other action authorized by this title.

The administrator shall permit such accountant or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report, and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(b) Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant and each beneficiary receiving benefits under the plan a copy of the summary plan description, and all modifications and changes referred to in section 102(a)(1)—

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant and each beneficiary who is receiving benefits under the plan every fifth year after the plan becomes subject to this part an updated summary plan description described in section 102 which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant and to each beneficiary who is receiving benefits under the plan the summary plan description described in section 102 every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 102(a)(1), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant and to each beneficiary who is receiving benefits.

(2) The administrator shall make copies of the plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent

information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 103(b)(3) and such other material as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(c) The Secretary may by regulation require that the administrator of any employee benefit plan furnish to each participant and to each beneficiary receiving benefits under the plan a statement of the rights of participants and beneficiaries under this title.

(d) Cross Reference—

For regulations respecting coordination of reports to the Secretaries of Labor and Treasury, see section 3004.

REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

SEC. 105. (a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

(1) the total benefits accrued, and

(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12 month period.

(c) Each administrator required to register under section 6057 of the Internal Revenue Code of 1954 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of such Code.

(d) Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.

REPORTS MADE PUBLIC INFORMATION

Sec. 106. (a) Except as provided in subsection (b), the contents of the descriptions, annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available to inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in section 105(a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act may be disclosed under such Act.

RETENTION OF RECORDS

Sec. 107. Every person subject to a requirement to file any description or report or to certify any information therefor under this title or who would be subject to such a requirement but for an exemption under section 104(a)(3) of this title shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption under section 104(a)(3).

RELIANCE ON ADMINISTRATIVE INTERPRETATIONS

Sec. 108. In any criminal proceeding under section 501 based on any act or omission in alleged violation of sections 101 through 107 and section 412 of this Act, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with sections 101 through 107 and section 412 of this Act if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any regulation or written ruling of the Secretary, or (2) publish and file any information required by any provision of this part if he pleads and proves that he published and filed such information in good faith, and in conformity with any regulation or written ruling of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the plan description, annual reports, and other reports required by this title, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

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FORMS

Sec. 109. (a) Except as provided in subsection (b) of this section, the Secretary may require that any information required under this title to be submitted to him, including but not limited to the information required to be filed by the administrator pursuant to section 103 (b)(3) and (c), must be submitted on such forms as he may prescribe.

(b) The financial statement and opinion required to be prepared by an independent qualified public accountant pursuant to section 103(a)(3)(A), the actuarial statement required to be prepared by an enrolled actuary pursuant to section 103(a)(4)(A) and the summary plan description required by section 102(a) shall not be required to be submitted on forms.

(c) The Secretary may prescribe the format and content of the summary plan description, the summary of the annual report described in section 104(b)(3) and any other report, statements or documents (other than the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated), which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan.

ALTERNATIVE METHODS OF COMPLIANCE

Sec. 110. (a) The Secretary on his own motion or after having received the petition of an administrator may prescribe an alternative method for satisfying any requirement of this part with respect to any pension plan or any type of pension plan subject to such requirement if he determines—

(1) that the use of such alternative method is consistent with the purposes of this title and that it provides adequate disclosure to the participants and beneficiaries in the plan, and adequate reporting to the Secretary,

(2) that the application of such requirement of this part would—

(A) increase the costs to the plan, or

(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved; and

(3) that the application of this part would be adverse to the interests of plan participants in the aggregate.

(b) An alternative method may be prescribed under subsection (a) by regulation or otherwise. If an alternative method is prescribed other than by regulation, the Secretary shall provide notice and an opportunity for interested persons to present their views, and shall publish in the Federal Register the provisions of such alternative method.

REPEAL AND EFFECTIVE DATE

Sec. 111. (a)(1) The Welfare and Pension Plans Disclosure Act is repealed except that such Act shall continue to apply to any conduct [and events] *which occurred before the effective date of this part.*

(2)(A) Section 664 of title 18, United States Code, is amended by striking out "any such plan subject to the provisions of the Welfare

and Pension Plans Disclosure Act" and inserting in lieu thereof "any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974".

(B)(i) Section 1027 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "title I of the Employee Retirement Income Security Act of 1974", and by striking out "Act" each place it appears and inserting in lieu thereof "title".

(ii) The heading for such section is amended by striking out "WELFARE AND PENSION PLANS DISCLOSURE ACT" and inserting in lieu thereof "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974".

(iii) The table of sections of chapter 47 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" in the item relating to section 1027 and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(C) Section 1954 of such title 18 is amended by striking out "any plan subject to the provisions of the Welfare and Pension Plans Disclosure Act as amended" and inserting in lieu thereof "any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974"; and by striking out "sections 3(3) and 5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended" and inserting in lieu thereof "sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974".

(D) Section 211 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 441) is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(b)(1) Except as provided in paragraph (2), this part (including the amendments and repeals made by subsection (a)) shall take effect on January 1, 1975.

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may postpone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure Act (and of any amendment made by subsection (a)(2)) and the effective date of any provision of this part, until the beginning of the first plan year of such plan which begins after January 1, 1975.

(c) The provisions of this title authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act.

PART 2—PARTICIPATION AND VESTING

COVERAGE

SEC. 201. This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)) other than—

(1) an employee welfare benefit plan;

(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compen-

sation for a select group of management or highly compensated employees;

(3) (A) a plan established and maintained by a society, order, or association described in section 501(c) (8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to or under such plan are made by employers of participants in such plan, or

(B) a trust described in section 501(c) (18) of such Code;

(4) a plan which is established and maintained by a labor organization described in section 501(c) (5) of the Internal Revenue Code of 1954 and which does not at any time after the date of enactment of this Act provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of the Internal Revenue Code of 1954;

(6) an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954, or a retirement bond described in section 409 of such Code; or

(7) Such plan is an excess benefit plan.

MINIMUM PARTICIPATION STANDARDS

SEC. 202. (a) (1) (A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 25; or

(ii) the date on which he completes 1 year of service.

(B) (i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "3 years or service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b) (1) (A) (ii) of the Internal Revenue Code of 1954) by an employer which is exempt from tax under section 501(a) of such Code, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "30" for "25". This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age, unless—

(A) the plan is a—

(i) defined benefit plan, or

(ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury), and

(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

(3) (A) For purposes of this section, the term "year of service" means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary.

(C) For purposes of this section, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b) (1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a) (1).

(2) In the case of any employee who has any 1-year break in service (as defined in section 203(b) (3) (A)) under the plan to which the service requirements of clause (i) of subsection (a) (1) (B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a) (1) in the case of any participant who has any 1-year break in service (as defined in section 203(b) (3) (A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a) (3)) after his return.

(4) In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a) (1)

if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this paragraph by reason of any prior break in service.

MINIMUM VESTING STANDARDS

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addtion shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

(A) A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

Years of service:	*Nonforfeitable percentage*
5	*25*
6	*30*
7	*35*
8	*40*
9	*45*
10	*50*
11	*60*
12	*70*
13	*80*
14	*90*
15 or more	*100.*

(C) (i) A plan satisfies the requirements of this subparagraph if a participant who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

If years of service equal or exceed—	*and sum of age and service equals or exceeds—*	*then the nonforfeitable percentage is—*
5	*45*	*50*
6	*47*	*60*
7	*49*	*70*
8	*51*	*80*
9	*53*	*90*
10	*55*	*100.*

(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any participant who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 205).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 302(c)(8).

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 204(c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest, in the case of a defined benefit plan, shall be computed on such amount at the rate determined for purposes of section 204(c)(2)(C) (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made

before the participant has any 1-year break-in service commencing after the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of this Act, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before the date of the enactment of this Act if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after the date of the enactment of this Act. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) Cross Reference.—

For nonforfeitability where the employee has a nonforfeitability right to at least 50 percent of his accrued benefit, see section 206(c).

(b)(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 22, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2), the plan may not disregard any such year of service during which the employee was a participant;

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970; and

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date.

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not

prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

(B) For purposes of this section, the term "hour of service" has the meaning provided by section 202(a)(3)(C).

(C) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as determined under regulations of the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purpose of this subparagraph.

(3)(A) For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 204(b)(1)(F) who has any 1-year break in service, years of service after such break shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such break.

(D) For purposes of paragraph (1), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

(4) Cross References.—

((A) For definitions of "accrued benefit" and "normal retirement age", see sections 3 (23) and (24).)

((B) For effect of certain cash out distributions, see section 204(d)(1).)

(c)(1)(A) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is

less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(2) Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary of the Treasury to preclude the discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1954.

(3) The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this part, the term "class year plan" means a profit sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

(d) A pension plan may allow for nonfeitable benefits after a lesser period and in greater amounts than are required by this part.

BENEFIT ACCRUAL REQUIREMENTS

Sec. 204. (a) Each pension plan shall satisfy the requirements of subsection (b)(2), and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1).

(b)(1)(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. A plan does not meet the requirements of this subparagraph unless the amount of accrued benefits of any participant who has separated from the service equals the amount of

accrued benefits to which he would have been entitled at normal retirement age if he had the same credited service under the plan and the same compensation (determined in accordance with this subparagraph) but had not separated from the service. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled at under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have particiapted in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this

section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only, if the accured benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to the date of the enactment of this Act, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 202(a)(3)(A).

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 301(b) (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 301(b) were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—

(i) do not exceed such social security benefits, and

(ii) terminate at the time of entitlement to such social security benefits commence.

(2) A plan satisfies the requirements of this paragraph if—

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(3)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken

into account under section 202(b)) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

(B) For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

(D) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary.

(E) For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(c)(1) For purposes of this section and section 203 an employee's accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2)(A) In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B)(i) In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

(ii) For purposes of clause (i), the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary

benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.

(C) For purposes of this subsection, the term "accumulated contributions" means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section 203(a)(2) does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which section 203(a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the realtionship to 5 percent which the Secretary of the Treasury determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(E) The accrued benefit derived from employee contributions shall not exceed the greater of—

(i) the employee's accrued benefit under the plan, or

(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.

(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(4) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit

derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(d) Notwithstanding section 203(b)(1), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

(e) For purposes of determining the employee's accrued benefit the plan shall not disregard service as provided in subsection (d) unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

(1) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(2) resumes employment covered under the plan, and

(3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has any 1-year break in service commencing after such withdrawal.

(f) For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

(g) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 302(c)(8).

(h) Cross Reference.—

(For special rules relating to class year plans and plan provisions adopted to preclude discrimination, see sections 203(c)(2) and (3).)

JOINT AND SURVIVOR ANNUITY REQUIREMENT

SEC. 205. (a) If a pension plan provides for the payment of benefits in the form of an annuity, such plan shall provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

(b) In the case of a plan which provides for the payment of benefits before the normal retirement age as defined in section 3 (24), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(1) the date the employee reaches the earliest retirement age, or

(2) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(c) (1) A plan described in subsection (b) does not meet the requirements of subsection (a) unless, under the plan, a participant has a reasonable period in which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subsection (b) ends and ending on the date on which he reaches normal retirement age if he continues his employment during that period.

(2) A plan does not meet the requirements of this subsection unless, in the case of such election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he had made an election under this subsection immediately prior to his retirement and if his retirement had occurred on the date immediately preceding the date of his death and within the period within which an election can be made.

(d) A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made under subsection (c)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

(e) A plan shall not be treated as satisfying the requirements of this section unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subsection) not to take such joint and survivor annuity.

(f) A plan shall not be treated as not satisfying the requirements of this section solely because, under the plan there is a provision that any election under subsection (c) or (e), and any revocation of any such election, does not become effective (or ceases to be effective) if

the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

(1) the participant dies from accidental causes,

(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) such election or revocation is made before such accident occurred.

(g) For purposes of this section:

(1) The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability).

(2) The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(3) The term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single annuity for the life of the participant.

(h) For the purposes of this section, a plan may take into account in any equitable fashion (as determined by the Secretary of the Treasury) any increased costs resulting from providing joint and survivor annuity benefits under an election made under subsection (c).

(i) This section shall apply only if—

(1) the annuity starting date did not occur before the effective date of this section, and

(2) the participant was an active participant in the plan on or after such effective date.

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

SEC. 206. (a) Nonforfeitable benefits accrued by terminated participants may be distributed in the manner set forth in the plan for payment of retirement benefits except that distribution of such benefits shall, at the election of the terminated participant, commence at the earlier of either—

(1) the first date that a participant who is not a terminated participant, with the same credited service under the plan, could have exercised any unrestricted option under the plan to receive retirement benefits, or

(2) the later of the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

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(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

For the purposes of this subsection, the term "terminated participant" means a participant for whom service is no longer being credited under the plan.

(b) If—

(1) a participant or beneficiary is receiving benefits under such plan, or

(2) a participant is separated from the service and has nonforfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act or the Railroad Retirement Act of 1937, or any increase in the wage base under such title II, if such increase takes place after the date of the enactment of this Act or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

(c) No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 203(a)(3)(D)(iii).

(d)(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before the date of enactment of this Act. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975 (d)(1).

TEMPORARY VARIANCES FROM CERTAIN VESTING REQUIREMENTS

SEC. 207. In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of enactment of this Act, the administrator petitions the Secretary, the Secretary may prescribe an alternate method which shall be treated as satisfying the requirements

of section 203(a)(2) or 204(b)(1) (other than subparagraph (D thereof)) or both for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 303 or 304 of this Act would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the administrator petitions the Secretary for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.

Mergers and Consolidations of Plans or Transfers of Plan Assets

Sec. 208. A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after the date of the enactment of this Act, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation.

RECORDKEEPING AND REPORTING REQUIREMENTS

Sec. 209. (a)(1) Except as provided by paragraph (2) every employer shall, in accordance with regulations prescribed by the Secretary, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) termintes his service with the employer, or

(C) has a 1-year break in service (as defined in section (b)(3)(A)).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the

preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.

(2) If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary of Labor, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary of Labor or his delegate, make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a), to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

(c) Cross Reference.—

PLANS MAINTAINED BY MORE THAN ONE EMPLOYER, PREDECESSOR PLANS, AND EMPLOYER GROUPS

Sec. 210. (a) Notwithstanding any other provision of this part or part 3, the following provisions shall apply to a plan maintained by more than one employer:

(1) Section 202 shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 203 and 204 shall be applied if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 302 shall be determined as if all participants in the plan were employed by a single employer.

(b) For purposes of this part and part 3—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

(c) For purposes of sections 202, 203, and 204, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(4) and (e)(3)(C) of such code) shall be treated as employed by a single employer.

With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 302 shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

(d) For purposes of sections 202, 203, and 204, under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c).

EFFECTIVE DATES

SEC. 211. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b)(1) Except as otherwise provided in subsection (d), sections 205, 206(d), and 208 shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of section 204 solely by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 306(c), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act or the Internal Revenue Code of 1954 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on the date of enactment of this Act are not less favorable to participants, in the aggregate, than the rules provided under sections 202, 203, and 204.

(2) For purposes of paragraph (1), the term "supplementary or special plan provision" means any plan provision which—

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of a participant of in the form of an annuity for the life of the participant with a survivor annuity for the life of his spouse, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse en-

vironment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit, this part shall apply to (1) the first plan year to which such election applies and to all subsequent plan years.

(e)(1) No pension plan to which section 202 applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 202 first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 202(b), or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 203 applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 203 first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 202(b)(3), or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

Part 3—Funding

COVERAGE

Sec. 301. (a) This part shall apply to any employee pension benefit plan described in section 4(a), (and not exempted under section 4(b)), other than—

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b);

(3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(4)(A) a plan which is established and maintained by a society, order, or association described in section 501(c) (8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to

or under such plan are made by employers of participants in such plan; or

(B) a trust described in section 501(c)(18) of such Code;

(5) a plan which has not at any time after the date of enactment of this Act provided for employer contributions,

(6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of the Internal Revenue Code of 1954,

(7) an individual retirement account or annuity as described in section 408(a) of the Internal Revenue Code of 1954, or a retirement bond described in section 409 of such Code (;

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 3(35)(B) of this title (; or

(9) an excess benefit plan.

(b) For the purposes of paragraph (2) of subsection (a) a plan is an "insurance contract plan" if—

(1) the plan is funded exclusively by the purchase of individual insurance contracts,

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary of the Treasury to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

MINIMUM FUNDING STANDARDS

SEC. 302. (a)(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 305) for any plan year to which this part applies. A plan to which this part applies shall have

satisfied the minimum funding standard for such plan for a plan year as of the end of such plan year the plan does not have an accumulated funding deficiency under the funding standard account (as required under subsection (b)) or the alternative minimum funding standard account (as required under section 305).

(2) For the purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

(b)(1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 303 (c)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, and

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D).

(3) For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 303(c)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(5) The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(c)(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2)(A) For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is

permitted under regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this part the value of a bond or other evidence of indebtedness which is not indefault as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary of the Treasury.

(3) For purposes of this part all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term "wages" under section 3121 of the Internal Revenue Code of 1954, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of the Internal Revenue Code of 1954,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary of the Treasury. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of the Treasury.

(6) If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (g)) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2), (B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(7) For purposes of paragraph (6), the term "full funding limitation" means the excess (if any) of—

(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).

(8) For purposes of this part, any amendment applying to plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment or, within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless he determines that such amendment is necessary because of a substantial business hardship (as determined under section 303(b)) and that waiver under section 303(a) is unavailable or inadequate.

(9) For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(10) For purposes of this part, any contributions for a plan year made by an employer after the last day of such plan year, but not later than 2½ months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such 2½ month period may be extended for not more than 6 months under regulations prescribed by the Secretary of the Treasury.

(d) Cross Reference.—For alternative amortization method for certain multiemployer plans see section 1013(d) of this Act.

VARIANCE FROM MINIMUM FUNDING STANDARD

Sec. 303. (a) If an employer, or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan are unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary of the Treasury may waive the requirements of section 302(a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under section 302(b)(2)(C). The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

(b) For purposes of this part, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether—

(1) the employer is operating at an economic loss,

(2) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(3) the sales and profits of the industry concerned are depressed or declining, and

(4) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(c) For purposes of this part, the term "waived funding deficiency" means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C) of section 302) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(d) Cross Reference.—

(For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1954, see section 412(d) of such Code.)

EXTENSION OF AMORTIZATION PERIODS

SEC. 304. (a) The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B) of section 302) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

(1) result in—

(A) a substantial risk to the voluntary continuation of the plan, or

(B) a substantial curtailment of pension benefit levels or employee compensation, and

(2) be adverse to the interests of plan participants in the aggregate.

(b)(1) No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 303(a) or an extension of time under subsection (a) of this section is in effect with respect to the plan, or if a plan amendment described in section 302(c)(8) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(2) Paragraph (1) shall not apply to any plan amendment which—

(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(B) only repeals an amendment described in section 302(c)(8), or

(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of the Internal Revenue Code of 1954.

ALTERNATIVE MINIMUM FUNDING STANDARD

SEC. 305. (a) A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this section.

(b) For a plan year the alternative minimum funding standard accounts shall be—

(1) charged with the sum of—

(A) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

(B) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

(C) an amount equal to the excess, if any, of credits to the alternative minimum funding standard account for all prior plan years over charges to such account for all such years, and

(2) credited with the amount considered contributed by the employer to or under the plan (within the meaning of section 302(c)(10) for the plan year.

(c) The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under section 302(b)(5) with respect to the funding standard account.

EFFECTIVE DATES

SEC. 306. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b) Except as otherwise provided in subsections (c) and (d) in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974 pursuant to one or more agreements which the Secretary finds to be and one or more employers, this part shall apply only with respect to plan years beginning after the earlier of the date specified in subparagrph (A) or (B) of section 211(c)(1).

(2) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

(d) In the case of a plan the administrator of which elects under 1017(d) of this Act to have the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit to apply to a plan year and to all subsequent plan years, this part shall apply to plan years beginning on the earlier of the first plan year to which such election applies or the first plan year determined under subsections (a), (b), and (c) of this section.

Part 4—Fiduciary Responsibility

COVERAGE

Sec. 401. (a) This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)), other than—

(1) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; or

(2) a plan consisting of an agreement described in section 736 of the Internal Revenue Code of 1954, which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest.

(b) For purposes of this part:

(1) In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, solely by reason of such investment, be deemed to include any assets of such investment company.

(2) In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to include any assets of such insurer. For purposes of this paragraph:

(A) The term "insurer" means an insurance company, insurance service, or insurance organization, qualified to do business in a State.

(B) The term "guaranteed benefit policy" means an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account.

ESTABLISHMENT OF PLAN

Sec. 402. (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1)),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 405 (c) (1), may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

ESTABLISHMENT OF TRUST

SEC. 403. (a) Except as provided in subsection (b), all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 402(a) or appointed by a person who is a named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that—

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this title, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c) (3).

(b) The requirements of subsection (a) of this section shall not apply—

(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

(3) to a plan—

(i) some or all of the participants of which are employees described in section 401(c) (1) of the Internal Revenue Code of 1954; or

(ii) which consists of one or more individual retirement accounts described in section 408 of the Internal Revenue

Code of 1954, to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of such Code, whichever is applicable;

(4) to any plan not subject to part 2 or 3 of this subtitle, or to title IV of this Act, if the Secretary exempts such a plan from the requirement of subsection (a); or

(5) to a contract established and maintained under section 403(b) of the Internal Revenue Code of 1954 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of such Code.

(c)(1) Except as provided in paragraph (2) or (3) or subsection (d), or under section 4042 and 4044 (relating to allocation of assets of terminated plans), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

(2)(A) In the case of a contribution which is made by an employer by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution.

(B) If a contribution is conditioned on qualification of the plan under section 401, 403(a), or 405(a) of the Internal Revenue Code of 1954, and if the plan does not qualify, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the date of denial of qualification of the plan.

(C) If a contribution is conditioned upon the deductability of the contribution under section 404 of the Internal Revenue Code of 1954, then, to the extent the deduction is disallowed, paragraph (1) shall not prohibit the return to the employer of such contribution (to the extent disallowed) within one year after the disapproval of the deduction.

(3) In the case of a contribution which would otherwise be an excess contribution (as defined in section 4972(b) of the Internal Revenue Code of 1954) paragraph (1) shall not prohibit a correcting distribution with respect to such contribution from the plan to the employer to the extent permitted in such section to avoid payment of an excise tax on excess contributions under such section.

(d)(1) Upon termination of a pension plan to which section 4021 does not apply at the time of termination and to which this part applies (other than a plan to which no employer contributions have been made) the assets of the plan shall be allocated in accordance with the provisions of section 4044 of this Act, except as otherwise provided in regulations of the Secretary.

(2) The assets of a welfare plan which terminates shall be distributed in accordance with the terms of the plan, except as otherwise provided in regulations of the Secretary.

FIDUCIARY DUTIES

SEC. 404. (a)(1) Subject to sections 403 (c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3)), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 407(d) (4) and (5)).

(b) Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)—

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's, or beneficiary's exercise of control.

LIABILITY FOR BREACH OF CO-FIDUCIARY

Sec. 405. (a) In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such fiduciary, knowing such act or omission is a breach,

(2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b)(1) Except as otherwise provided in subsection (d) and in section 403(a)(1) and (2), if the assets of a plan are held by two or more trustees—

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(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement authorized by the trust instrument allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) or any other provision of this part.

(3)(A) In the case of a plan the assets of which are held in more that one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 403(a)(1).

(c)(1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and (B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that—

(A) the named fiduciary violated section 404(a)(1)—

(i) with respect to such allocation or designation,

(ii) with respect to the establishment of implementation of the procedure under paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a).

(3) For purposes of this subsection, the term "trustee responsibility" means any responsibility provided in the plan's trust instrument plan's (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 402(c)(3).

(d)(1) If an investment manager or managers have been appointed under section 402(c)(3), then, notwithstanding subsections (a)(2) and (3) and subsection (b), no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee.

PROHIBITED TRANSACTIONS

Sec. 406. (a) Except as provided in section 408:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 407(a).

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a).

(b) A fiduciary with respect to a plan shall not—

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer.

10 PERCENT LIMITATION WITH RESPECT TO ACQUISITION AND HOLDING OF EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CERTAIN PLANS

Sec. 407. (a) Except as otherwise provided in this section and section 414:

(1) A plan may not acquire or hold—

(A) any employer security which is not a qualifying employer security, or

(B) any employer real property which is not qualifying employer real property.

(2) A plan may not acquire any qualifying employer security or qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities

and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

(3) (A) After December 31, 1984, a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984, exceeds 10 percent of the greater of—

(i) the fair market value of the assets of the plan, determined on December 31, 1984, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(B) Subparagraph (A) of this paragraph shall not apply to any plan which on any date after December 31, 1974, and before January 1, 1985, did not hold employer securities or employer real property (or both) the aggregate fair market value of which determined on such date exceeded 10 percent of the greater of

(i) the fair market value of the assets of the plan, determined on such date, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(4) (A) After December 31, 19679, a plan may not hold any employer securities or employer real property in excess of the amount specified in regulations under subparagraph (B). This subparagraph shall not apply to a plan after the earliest date after December 31, 1974, on which it complies with such regulations.

(B) Not later than December 31, 1976, the Secretary shall prescribe regulations which shall have the effect of requiring that a plan divest itself of 50 percent of the holdings of employer securities and employer real property which the plan would be required to divest before January 1, 1985, under paragraph (2) or subsection (c) (whichever is applicable).

(b) (1) Subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.

(2) Cross References.—

(A) For exemption from diversification requirements for holding of qualifying employer securities and qualifying employer real property by eligible individual account plans, see section 404(a)(2),

(B) For exemption from prohibited transactions for certain acquisitions of qualifying employer securities and qualifying employer real property which are not in violation of 10 percent limitation, see section 408(e).

(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 414(c).

(c) (1) A plan which makes the election under paragraph (3) shall be treated as satisfying the requirement of subsection (a) (3) if and only if employer securities held on any date after December 31, 1974 and before January 1, 1985 have a fair market value, determined as of December 31, 1974, not in excess of 10 percent of the lesser of—

(A) the fair market value of the assets of the plan determined on such date (disregarding any portion of the fair market value of employer securities which is attributable to appreciation of

such securities after December 31, 1974) but not less than the fair market value of plan assets on January 1, 1975, or

(B) an amount equal to the sum of (i) the total amount of the contributions to the plan received after December 31, 1974, and prior to such date, plus (ii) the fair market value of the assets of the plan, determined on January 1, 1975.

(2) For purposes of this subsection, in the case of an employer security held by a plan after January 1, 1975, the ownership of which is derived from ownership of employer securities held by the plan on January 1, 1975, or from the exercise of rights derived from such ownership, the value of such security held after January 1, 1975, shall be based on the value as of January 1, 1975, of the security from which ownership was derived. The Secretary shall prescribe regulations to carry out this paragraph.

(3) An election under this paragraph may not be made after December 31, 1975. Such an election shall be made in accordance with regulations prescribed by the Secretary, and shall be irrevocable. A plan may make an election under this paragraph only if on January 1, 1975, the plan holds no employer real property. After such election and before January 1, 1985 the plan may not acquire any employer real property.

(d) For purposes of this section—

(1) The term "employer security" means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. A contract to which section 408(b)(5) applies shall not be treated as a security for purposes of this section.

(2) The term "employer real property" means real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this section, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

(3)(A) The term "eligible individual account plan" means an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on the date of enactment of this Act and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954.

(B) Notwithstanding subparagraph (A), a plan shall be treated as an eligible individual account plan with respect to the acquisition or holding of qualifying employer real property or qualifying employer securities only if such plan explicitly provides for acquisition and holding of qualifying employer securities or qualifying employer real property (as the case may be).

In the case of a plan in existence on the date of enactment of this Act, this subparagraph shall not take effect until the expiration of one year after the effective date of this part.

(4) the term "qualifying employer real property" means parcels of employer real property—

(A) if a substantial number of the parcels are dispersed geographically;

(B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use;

(C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer); and

(D) if such acquisition and retention complies with the provisions of this part (other than section 404(a)(1)(B) to the extent it requires diversification, and sections 404(a)(1)(C), 406, and subsection (a) of this section).

(5) The term "qualifying employer security" means an employer security which is stock; or a marketable obligation (as defined in subsection (e)).

(6) The term "employee stock ownership plan" means an individual account plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase both of which are qualified, under section 401 of the Internal Revenue Code of 1954, and which is designed to invest primarily in qualifying employee securities, and

(B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(7) A corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1954, except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided in regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary. Regulations under this paragraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

(8) The Secretary may prescribe regulations specifying the extent to which conversions, splits, the exercise of rights, and similar transactions are not treated as acquisitions.

(e) For purposes of subsection (d)(5), the term "marketable obligation" means a bond, debenture, note, or certificate, or other evidence

of indebtedness (hereinafter in this subsection referred to as "obligation") if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

EXEMPTIONS FROM PROHIBITED TRANSACTIONS

Sec. 408. (a) The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a). Action under this subsection may be taken only after consultation and coordination with the Secretary of the Treasury. An exemption granted under this section shall not relieve a fiduciary from any other applicable provision of this Act. The Secretary may not grant an exemption under this subsection unless he finds that such exemption is—

(1) administratively feasible,

(2) in the interests of the plan and of its participants and beneficiaries, and

(3) protective of the rights of participants and beneficiaries of such plan.

Before granting an exemption under this subsection from section 406 (a) or 407(a), the Secretary shall publish notice in the Federal Reg-

ister of the pendency of the exemption, shall require that adequate notice be given to interested persons, and shall afford interested persons opportunity to present views. The Secretary may not grant an exemption under this subsection from section 406(b) unless he affords an opportunity for a hearing and makes a determination on the record with respect to the findings required by paragraphs (1), (2), and (3) of this subsection.

(b) The prohibitions provided in section 406 shall not apply to any of the following transactions:

(1) Any loans made by the plan to parties in interest who are participants or beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis, (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees, (C) are made in accordance with specific provisions regarding such loans set forth in the plan, (D) bear a reasonable rate of interest, and (E) are adequately secured.

(2) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

(3) A loan to an employee stock ownership plan (as defined in section 407(d)(6)), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at an interest rate which is not in excess of a reasonable rate.

If the plan gives collateral to a party in interest for such loan, such collateral may consist only of qualifying employer securities (as defined in section 407(d)(5)).

(4) The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment.

(5) Any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State—if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a party in interest which is wholly owned (directly or indirectly) by the employer maintaining the plan, or by

any person which is a party in interest with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are parties—in interest (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan).

(6) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans.

Such ancillary services shall not be provided at more than reasonable compensation.

(7) The exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion.

(8) Any transaction between a plan and (i) a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency or (ii) a pooled investment fund of an insurance company qualified to do business in a State, if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan.

(9) The making by a fiduciary of a distribution of the assets of the plan in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of this Act (relating to allocation of assets).

(c) Nothing in section 406 shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan; except that no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such plan, except for reimbursement of expenses properly and actually incurred; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Section 407(b) and subsections (a), (b), (c) and (e) of this section shall not apply to any transaction in which a plan, directly or indirectly—

(1) lends any part of the corpus or income of the plan to;

(2) pays any compensation for personal services rendered to the plan to; or

(3) acquires for the plan any property from or sells any property to;

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1954), a member of the family (as defined in section 267(c)(4) of such Code) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of this subsection a shareholder employee (as defined in section 1379 of the Internal Revenue Code of 1954) and a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of the Internal Revenue Code of 1954) and an employer or association of employers which establishes such an account or annuity under section 408(c) of such code shall be deemed to be an owner-employee.

(e) Sections 406 and 407 shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5)) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 407(d)(4))—

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 407(e)(1)),

(2) if no commission is charged with respect thereto, and
(3) if—

(A) the plan is an eligible individual account plan (as defined in section 407(d)(3)), or

(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 407(a).

LIABILITY FOR BREACH OF FIDUCIARY DUTY

SEC. 409. (a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

EXCULPATORY PROVISIONS; INSURANCE

SEC. 410. (a) Except as provided in sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(b) Nothing in this subpart shall preclude—

(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING CERTAIN POSITIONS

SEC. 411. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 102(6) of the Comprehensive Drug Abuse Prevention and Control

Act of 1970, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)(1)), a violation of any provision of this Act, a violation of section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. 186), a violation of chapter 63 of title 18, United States Code, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or

(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this title. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.

(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

BONDING

Sec. 412. (a) *Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as "plan official") shall be bonded as provided in this section; except that—*

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, and

(2) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Secretary, which amount shall be at least $1,000,000.

Paragraph (2) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation, only if such bank or institution meets bonding or similar requirements under State law which the Secretary determines are at least equivalent to those imposed on banks by Federal law.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 per centum limitation of the preceding sentence. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the plan official, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6, United States Code. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any plan official to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any plan official of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section including exempting a plan from the requirements of this section where he finds that (1) other bonding arrangements or (2) the overall financial condition of the plan would be adequate to protect the interests of the beneficiaries and participants. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

LIMITATION ON ACTIONS

SEC. 413. (a) No action may be commenced under this title with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

(1) six years after (A) the date of the last action which constituted a part of the breach of violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this title;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

EFFECTIVE DATE

SEC. 414. (a) Except as provided in subsections (b), (c), and (d), this part shall take effect on January 1, 1975.

(b) (1) The provisions of this part authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act.

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 402, 403 (other than 403(c)), 405 (other than 405(a) and (d)), and 410(a), as it applies to any plan in existence on the date of enactment of this Act if he determines such postponement is (A) necessary to amend the instrument establishing the plan under which the plan is maintained and (B) not adverse to the interest of participants and beneficiaries.

(3) This part shall take effect on the date of enactment of this Act with respect to a plan which terminates after June 30, 1974, and before January 1, 1975, and to which at the time of termination section 4021 applies.

(c) Section 406 and 407(a) (relating to prohibited transactions) shall not apply—

(1) until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954 or the corresponding provisions of prior law);

(2) until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954) or the corresponding provisions of prior law;

(3) until June 30, 1984, to the sale, exchange, or other disposition of property described in paragraph (2) between a plan and a party in interest if—

(A) in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(4) until June 30, 1977, to the provision of services, to which paragraphs (1), (2), and (3) do not apply, between a plan and a party in interest—

(A) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or

(B) if the party in interest ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if such provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954) or the corresponding provisions of prior law; or

(5) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a) (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideartion.

(d) Any election, or failure to elect, by a disqualified person under section 2003(c)(1)(B) of this Act shall be treated for purposes of this part (but not for purposes of section 514) as an act or omission occuring before the effective date of this part.

Part 5—Administration and Enforcement

CRIMINAL PENALTIES

Sec. 501. Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $100,000.

CIVIL ENFORCEMENT

Sec. 502. (a) A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;

(3) by a participant, beneficiary, or fiduciary, (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c);

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title; or

(6) by the Secretary to collect any civil penalty under subsection (i).

(b) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if—

(1) requested by the Secretary of the Treasury, or

(2) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefit under the plan.

(c) Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this title to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(d)(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against a plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

(e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent

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jurisdiction and district courts of the United States shall have co current jurisdiction of actions under subsection (a)(1)(B) of th section.

(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where the p is administered, where the breach took place, or where a defenda resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) In any action under this title by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(h) A copy of the complaint in any action under this title by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved (as defined in section 4975(f)(4) of the Internal Revenue Code of 1954); except that if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation, which regulations shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975 (e)(1) of such Code.

(j) In all civil actions under this title, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518 (a) of title 28, United States Code), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this Act, or to compel him to take action required under this title, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

CLAIMS PROCEDURE

Sec. 503. In accordance with regulations of the Secretary, every employee benefit plan shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

INVESTIGATIVE AUTHORITY

Sec. 504. (a) The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order thereunder—

(1) to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this title, and

(2) to enter such places, inspect such books and records and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this title or any rule or regulation issued thereunder or if the entry is pursuant to an agreement with the plan.

The Secretary may make available to any person actually affected by any matter which is the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter which may be the subject of such investigation; except that any information obtained by the Secretary pursuant to section 6103(g) of the Internal Revenue Code of 1954 shall be made available only in accordance with regulations prescribed by the Secretary of the Treasury.

(b) The Secretary may not under the authority of this section require any plan to submit to the Secretary any books or records of the plan more than once in any 12 month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order thereunder.

(c) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) are hereby made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. To the extent he considers appropriate, the Secretary may delegate his investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))).

REGULATIONS

Sec. 505. Subject to title III and section 109, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this title. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 504(a) and (b)).

OTHER AGENCIES AND DEPARTMENTS

Sec. 506. In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this title and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this title. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this title as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

ADMINISTRATION

Sec. 507. (a) Subchapter II of chapter 5, and chapter 7, of title 5, United States Code (relating to administrative procedure), shall be applicable to this title.

(b) Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) In addition to the number of positions authorized by subsection (a), the Secretary of Labor is authorized, without regard to any other provision of this section, to place 1 position in the Department of Labor in grade GS–18, and a total of 20 positions in the Department of Labor in grades GS–16 and 17."

(c) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this title or the Internal Revenue Code of 1954 with respect to any employee benefit plan under which he is a participant or beneficiary, any employee organization of which he is a member, or any employer organization in which he has an interest. This subsection does not apply to an employee benefit plan which covers only employees of the United States.

APPROPRIATIONS

Sec. 508. There are hereby authorized to be appropriated such sums as may be necessary to enable the Secretary to carry out his functions and duties under this Act.

SEPARABILITY PROVISIONS

Sec. 509. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

INTERFERENCE WITH RIGHTS PROTECTED UNDER ACT

Sec. 510. It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this title section 3001, or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this title, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this Act or the Welfare and Pension Plans Disclosure Act. The provisions of section 502 shall be applicable in the enforcement of this section.

COERCIVE INTERFERENCE

Sec. 511. It shall be unlawful for any person through the use of fraud, force, violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce, or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, this title, section 3001, or the Welfare and Pension Plans Disclosure Act. Any person who willfully violates this section shall be fined $10,000 or imprisoned for not more than one year, or both.

ADVISORY COUNCIL

Sec. 512. (a)(1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter in this section referred to as the "Council") consisting of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be members of the same political party.

(2) Members shall be persons qualified to appraise the programs instituted under this Act.

(3) Of the members appointed, three shall be representatives of employee organizations (at least one of whom shall be representative of any organization members of which are participants in a multiem-

ployer plan); three shall be representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); three representatives shall be appointed from the general public, one of whom shall be a person representing those receiving benefits from a pension plan; and there shall be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

(4) Members shall serve for terms of three years except that of those first appointed, five shall be appointed for terms of one year, five shall be appointed for terms of two years, and five shall be appointed for terms of three years. A member may be reappointed. A member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present and voting.

(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four times each year and at such other times as the Secretary requests. In his annual report submitted pursuant to section 513(b), the Secretary shall include each recommendation which he has received from the Council during the preceding calendar year.

(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d)(1) Members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council.

(2) While away from their homes or regular places of business in the performance of services for Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(e) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

RESEARCH, STUDIES, AND ANNUAL REPORT

Sec. 513. (a)(1) The Secretary is authorized to undertake research and surveys and in connection therewith to collect, compile, analyze and publish data, information, and statistics relating to employee benefit plans, including retirement, deferred compensation, and welfare plans, and types of plans not subject to this Act.

(2) The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (A) the effects of this title upon the provisions and costs of pension plans, (B) the role of private pensions in meeting the economic security needs of the Nation, and (C) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial and actuarial characteristics and practices, and methods of encouraging the growth of the private pension system.

(3) The Secretary may, as he deems appropriate or necessary, undertake other studies relating to employee benefit plans, the matters regulated by this title, and the enforcement procedures provided for under this title.

(4) The research, surveys, studies, and publications referred to in this subsection may be conducted directly, or indirectly through grant or contract arrangements.

(b) The Secretary shall submit annually a report to the Congress covering his administration of this title for the preceding year, and including (1) an explanation of any variances or extensions granted under section 110, 207, 303, or 304 and the projected date for terminating the variance; (2) the status of cases in enforcement status; (3) recommendations received from the Advisory Council during the preceding year; and (4) such information, data, research findings, studies, and recommendations for further legislation in connection with the matters covered by this title as he may find advisable.

(c) The Secretary is authorized and directed to cooperate with the Congress and its appropriate committees, subcommittees, and staff in supplying data and any other information, and personnel and services, required by the Congress in any study, examination, or report by the Congress relating to pension benefit plans established or maintained by States or their political subdivisions.

EFFECT ON OTHER LAWS

SEC. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes

of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS

SEC. 1001. AMENDMENT OF INTERNAL REVENUE CODE OF 1954

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Participation, Vesting, Funding, Administration, Etc.

PART 1—PARTICIPATION, VESTING, AND FUNDING

SEC. 1011. MINIMUM PARTICIPATION STANDARDS

Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus, plans, etc.) is amended by adding at the end thereof the following:

"Subpart B—Special Rules

"Sec. 410. Minimum participation standards.
"Sec. 411. Minimum vesting standards.
"Sec. 412. Minimum funding standards.
"Sec. 413. Collectively bargained plans.
"Sec. 414. Definitions and special rules.
"Sec. 415. Limitations on benefits and contributions under qualified plans.

"SEC. 410. MINIMUM PARTICIPATION STANDARDS

"(a) PARTICIPATION.—

"(1) MINIMUM AGE AND SERVICE CONDITIONS.—

"(A) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

"(i) the date on which the employee attains the age of 25; or

"(ii) the date on which he completes 1 year of service.

"(B) SPECIAL RULES FOR CERTAIN PLANS.—

"(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of sub-

paragraph (A) shall be applied by substituting '3 years of service' for '1 year of service'.

"(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii)) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting '30' for '25'. This clause shall not apply to any plan to which clause (i) applies.

"(2) MAXIMUM AGE CONDITIONS.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age, unless—

"(A) the plan is a—

"(i) defined benefit plan, or

"(ii) target benefit plan (as defined under regulations prescribed by the Secretary or his delegate), and

"(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

"(3) DEFINITION OF YEAR OF SERVICE.—

"(A) GENERAL RULE.—For purposes of this subsection, the term 'year of service' means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, under regulations prescribed by the Secretary of Labor, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

"(B) SEASONAL INDUSTRIES.—In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term 'year of service' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

"(C) HOURS OF SERVICE.—For purposes of this subsection the term 'hour of service' means a time of service determined under regulations prescribed by the Secretary of Labor.

"(D) MARITIME INDUSTRIES.—For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out this subparagraph.

"(4) TIME OF PARTICIPATION.—A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service

requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

"(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

"(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

"(5) Breaks in service.—

"(A) General rule.—Except as otherwise provided in subparagraphs (B), (C), and (D), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of paragraph (1).

"(B) Employees under 3-year 100 percent vesting.—In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

"(C) 1-year break in service.—In computing an employee's period of service for purposes of subsection (a)(1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in paragraph (3)) after his return.

"(D) Nonvested participants.—In the case of a participant who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

"(b) Eligibility.—

"(1) In general.—A trust shall not constitute a qualified trust under section 401(a) unless the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under section 401(a) which benefits either—

"(A) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the

plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation, or

"*(B) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, or highly compensated.*

"*(2)* EXCLUSION OF CERTAIN EMPLOYEES.—*For purposes of paragraph (1), there shall be excluded from consideration—*

"*(A) employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,*

"*(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and*

"*(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).*

Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight.

"*(c)* APPLICATION OF PARTICIPATION STANDARDS TO CERTAIN PLANS.—

"*(1) The provisions of this section (other than paragraph (2) of this subsection) shall not apply to—*

"*(A) a governmental plan (within the meaning of section 414(d)),*

"*(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by subsection (d) of this section has not been made,*

"*(C) a plan which has not at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974 provided for employer contributions, and*

"*(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) if no part of the contributions to or under such plan are made by employers of participants in such plan.*

"*(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the requirements of section 401(a)(3) as in effect on the day before the date of the enactment of this section.*

"(d) ELECTION BY CHURCH TO HAVE PARTICIPATION, VESTING, FUNDING, ETC., PROVISIONS APPLY.—

"(1) IN GENERAL.—*If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner as the Secretary or his delegate may by regulations prescribe), then the provisions of this title relating to participation, vesting, funding, etc. (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.*

"(2) ELECTION IRREVOCABLE.—*An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable.*"

SEC. 1012. MINIMUM VESTING STANDARDS.

(a) IN GENERAL.—*Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 410 the following new section:*

"SEC. 411. MINIMUM VESTING STANDARDS.

"(a) GENERAL RULE.—*A trust shall not constitute a qualified trus under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in subsection (a)(8)) and in addition satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b).*

"(1) EMPLOYEE CONTRIBUTIONS.—*A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.*

"(2) EMPLOYER CONTRIBUTIONS.—*A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).*

"(A) 10-YEAR VESTING.—*A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.*

"(B) 5- TO 15-YEAR VESTING.—*A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:*

"Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100.

"(C) RULE OF 45.—

"(i) *A plan satisfies the requirements of this subparagraph if an employee who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:*

"If years of service equal or exceed—	and sum of age and service equals or exceeds—	then the nonforfeitable percentage is—
5	45	50
6	47	60
7	49	70
8	51	80
9	53	90
10	55	100.

"(ii) *Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any employee who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.*

"(3) CERTAIN PERMITTED FORFEITURES, SUSPENSIONS, ETC.—*For purposes of this subsection—*

"(A) FORFEITURE ON ACCOUNT OF DEATH.—*A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).*

"(B) SUSPENSION OF BENEFITS UPON REEMPLOYMENT OF RETIREE.—*A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—*

"(i) *in the case of a plan other than a multiemployer plan, by the employer who maintains the plan under which such benefits were being paid; and*

"(ii) *in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.*

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term 'employed'.

"(*C*) EFFECT OF RETROACTIVE PLAN AMENDMENTS.—*A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(c)(8).*

"(*D*) WITHDRAWAL OF MANADATORY CONTRIBUTION.—

"(*i*) *A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.*

"(*ii*) *Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan, the plan provision required under this clause may provide that such repayment must be made before the participant has any one-year break in service commencing after the withdrawal.*

"(*iii*) *In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of the Employee Retirement Income Security Act of 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant before the date of the enactment of the Act if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after the date of the enactment of such Act. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this clause.*

"(*iv*) *For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.*

"(v) *For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19).*

"(4) SERVICE INCLUDED IN DETERMINATION OF NONFORFEITABLE PERCENTAGE.—*In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:*

"(A) *years of service before age 22, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;*

"(B) *years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;*

"(C) *years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary or his delegate);*

"(D) *service not required to be taken into account under paragraph (6);*

"(E) *years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970; and*

"(F) *years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date.*

"(5) YEAR OF SERVICE.—

"(A) GENERAL RULE.—*For purposes of this subsection, except as provided in subparagraph (C), the term 'year of service' means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.*

"(B) HOURS OF SERVICE.—*For purposes of this subsection, the term 'hour of service' has the meaning provided by section 410(a)(3)(C).*

"(C) SEASONAL INDUSTRIES.—*In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term 'year of service' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.*

"(D) MARITIME INDUSTRIES.—*For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.*

"(6) BREAKS IN SERVICE.—

"(A) DEFINITION OF 1-YEAR BREAK IN SERVICE.—*For purposes of this paragraph, the term '1-year break in service'*

means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.

"(B) 1 YEAR OF SERVICE AFTER 1-YEAR BREAK IN SERVICE.—*For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.*

"(C) 1-YEAR BREAK IN SERVICE UNDER DEFINED CONTRIBUTION PLAN.—*For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has any 1-year break in service, years of service after such break shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such break.*

"(D) NONVESTED PARTICIPANTS.—*For purposes of paragraph (4), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.*

"(7) ACCRUED BENEFIT.—

"(A) IN GENERAL.—*For purposes of this section, the term 'accrued benefit' means—*

"(i) *in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or*

"(ii) *in the case of a plan which is not a defined benefit plan, the balance of the employee's account.*

"(B) EFFECT OF CERTAIN DISTRIBUTIONS.—*Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—*

"(i) *a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the Secretary or his delegate, or*

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"(*ii*) *a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.*

Clause (*i*) *of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause* (*ii*) *of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary or his delegate.*

"(*C*) REPAYMENT OF SUBPARAGRAPH (B) DISTRIBUTIONS.—*For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph* (*B*) *unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph* (*B*) *with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection* (*c*)(*2*)(*C*) *and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—*

"(*i*) *received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,*

"(*ii*) *resumes employment covered under the plan, and*

"(*iii*) *repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection* (*c*)(*2*)(*C*).

In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has any one-year break in service commencing after such withdrawal.

"(*8*) NORMAL RETIREMENT AGE.—*For purposes of this section, the term 'normal retirement age' means the earlier of—*

"(*A*) *the time a plan participant attains normal retirement age under the plan, or*

"(*B*) *the later of—*

"(*i*) *the time a plan participant attains age 65, or*

"(*ii*) *the 10th anniversary of the time a plan participant commenced participation in the plan.*

"(*9*) NORMAL RETIREMENT BENEFIT.—*For purposes of this section, the term 'normal retirement benefit' means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—*

"(*A*) *medical benefits, and*

"(*B*) *disability benefits not in excess of the qualified disability benefit.*

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed

the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act become payable which—

"(i) do not exceed such social security benefits, and

"(ii) terminate when such social security benefits commence.

"(10) Changes in vesting schedule.—

"(A) General rule.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

"(B) Election of former schedule.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

"(b) Accrued Benefit Requirements.—

"(1) General rules.—

"(A) 3-percent method.—A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

"(i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

"(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. A plan does not meet the requirements of this subparagraph unless the amount of accrued benefits of any participant who has separated from the service equals the amount of accrued benefits to which he would have been

entitled at normal retirement age if he had the same credited service under the plan and the same compensation (determined in accordance with this subparagraph) but had not separated from the service. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

"(*B*) *133⅓* PERCENT RULE.—*A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—*

"(*i*) *any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;*

"(*ii*) *any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;*

"(*iii*) *the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and*

"(*iv*) *social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.*

"(*C*) FRACTIONAL RULE.—*A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to*

compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

"(*D*) ACCRUAL FOR SERVICE BEFORE EFFECTIVE DATE.—*Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—*

"(*i*) *his accrued benefit determined under the plan, as in effect from time to time prior to the date of the enactment of the Employee Retirement Income Security Act of 1974, or*

"(*ii*) *an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.*

"(*E*) FIRST TWO YEARS OF SERVICE.—*Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term years of service has the meaning provided by section 410(a)(3)(A).*

"(*F*) CERTAIN INSURED DEFINED BENEFIT PLANS.—*Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—*

"(*i*) *is funded exclusively by the purchase of insurance contracts, and*

"(*ii*) *satisfies the requirements of paragraphs (2) and (3) of section 412(i) (relating to certain insurance contract plans),*

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 412(i) were satisfied.

"(*G*) ACCRUED BENEFIT MAY NOT DECREASE ON ACCOUNT OF INCREASING AGE OR SERVICE.—*Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—*

"(*i*) *do not exceed such social security benefits, and*

"(*ii*) *terminate when such social security benefits commence.*

"(2) SEPARATE ACCOUNTING REQUIRED IN CERTAIN CASES.—*A plan satisfies the requirements of this paragraph if—*

"(A) *in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and*

"(B) *in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.*

"(3) YEAR OF PARTICIPATION.—

"(A) DEFINITION.—*For purposes of determining an employee's accrued benefit, the term 'year of participation' means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5)) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.*

"(B) LESS THAN FULL TIME SERVICE.—*For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.*

"(C) LESS THAN 1,000 HOURS OF SERVICE DURING YEAR.—*For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.*

"(D) SEASONAL INDUSTRIES.—*In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term 'year of participation' shall be such period as determined under regulations prescribed by the Secretary of Labor.*

"(E) MARITIME INDUSTRIES.—*For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.*

"(c) ALLOCATION OF ACCRUED BENEFITS BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS.—

"(1) ACCRUED BENEFIT DERIVED FROM EMPLOYER CONTRIBUTIONS.—*For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date*

is the excess, if any, of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

"(2) ACCRUED BENEFIT DERIVED FROM EMPLOYEE CONTRIBUTIONS.—

"(A) PLANS OTHER THAN DEFINED BENEFIT PLANS.—*In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—*

"(i) *except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or*

"(ii) *if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).*

"(B) DEFINED BENEFIT PLANS.—

"(i) IN GENERAL.—*In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.*

"(ii) APPROPRIATE CONVERSION FACTOR.—*For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary or his delegate.*

"(C) DEFINITION OF ACCUMULATED CONTRIBUTIONS.—*For purposes of this subsection, the term 'accumulated contributions' means the total of—*

"(i) *all mandatory contributions made by the employee,*

"(ii) *interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and*

"(iii) *interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which subsection (a)(2) applies (by*

reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term 'mandatory contributions' means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"(D) ADJUSTMENTS.—The Secretary or his delegate is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary or his delegate determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

"(E) LIMITATION.—The accrued benefit derived from employee contributions shall not exceed the greater of—

"(i) the employee's accrued benefit under the plan, or

"(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.

"(3) ACTUARIAL ADJUSTMENT.—For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

"(d) SPECIAL RULES.—

"(1) COORDINATION WITH SECTION 401(a)(4).—A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) unless—

"(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are officers, shareholders, or highly compensated, or

"(*B*) *there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders, or highly compensated.*

"(*2*) PROHIBITED DISCRIMINATION.—*Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401(a)(4).*

"(*3*) TERMINATION OR PARTIAL TERMINATION; DISCONTINUANCE OF CONTRIBUTIONS.—*Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401 (a) unless the plan of which such trust is a part provides that—*

"(*A*) *upon its termination or partial termination, or*

"(*B*) *in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,*

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401(a)(4), may not be used for designated employees in the event of early termination of the plan.

"(*4*) CLASS YEAR PLANS.—*The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this section, the term 'class year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.*

"(*5*) TREATMENT OF VOLUNTARY EMPLOYEE CONTRIBUTIONS.—*In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.*

"(*6*) ACCRUED BENEFIT NOT TO BE DECREASED BY AMENDMENT.—*A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8).*

"(e) *Application of Vesting Standards to Certain Plans.*—

"(1) *The provisions of this section (other than paragraph (2)) shall not apply to—*

"(A) *a governmental plan (within the meaning of section 414(d)),*

"(B) *a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410 (d) has not been made,*

"(C) *a plan which has not, at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974, provided for employer contributions, and*

"(D) *a plan established and maintained by a society, order, or association described in section 501(c) (8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.*

"(2) *A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the vesting requirements resulting from the application of section 401(a)(4) and 401(a)(7) as in effect on the day before the date of the enactment of the Employee Retirement Income Security Act of 1974.*

(b) *Comparability of Plans.*—*Section 401(a) (relating to requirements for qualification) is amended by adding at the end of paragraph (5) the following: "For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate. For the purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his delegate to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates."*

(c) *Variations From Certain Vesting and Accrued Benefits Requirements.*—*In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of the enactment of this Act, the plan administrator petitions the Secretary of Labor, the Secretary of Labor may prescribe an alternate method which shall be treated as satisfying the requirements of subsection (a)(2) of section 411 of the Internal Revenue Code of 1954, or of subsection (b)(1) (other than subparagraph (D) thereof) of such section 411, or of both such provisions for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—*

(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 412 (d) or (e) would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the plan administrator petitions the Secretary of Labor for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.

SEC. 1013. MINIMUM FUNDING STANDARDS.

(a) In General.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 411 the following new section:

"SEC. 412. MINIMUM FUNDING STANDARDS.

"(a) General Rule.—Except as provided in subsection (h), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

"(1) such plan included a trust which qualified (or was determined by the Secretary or his delegate to have qualified) under section 401(a), or

"(2) such plan satisfied (or was determined by the Secretary or his delegate to have satisfied) the requirements of section 403 (a) or 405(a).

A plan to which this section applies shall have satisfied the minimum funding standard for such plan for a plan year if at the end of such plan year, the plan does not have an accumulated funding deficiency. For purposes of this section and section 4971, the term 'accumulated funding deficiency' means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

"(b) Funding Standard Account.—

"(1) Account required.—Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

"(2) Charges to account.—For a plan year, the funding standard account shall be charged with the sum of—

"(A) the normal cost of the plan for the plan year,

"(*B*) *the amounts necessary to amortize in equal annual installments (until fully amortized)*—

"(*i*) *in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,*

"(*ii*) *in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),*

"(*iii*) *separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),*

"(*iv*) *separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and*

"(*v*) *separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,*

"(*C*) *the amount necessary to amortize each waived funding deficiency (within the meaning of subsection (d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, and*

"(*D*) *the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D).*

"(*3*) CREDITS TO ACCOUNT.—*For a plan year, the funding standard account shall be credited with the sum of*—

"(*A*) *the amount considered contributed by the employer to or under the plan for the plan year,*

"(*B*) *the amount necessary to amortize in equal annual installments (until fully amortized)*—

"(*i*) *separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),*

"(*ii*) *separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and*

"(*iii*) *separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,*

"(*C*) *the amount of the waived funding deficiency (within the meaning of subsection (d)(3)) for the plan year, and*

"(D) *in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.*

"(4) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—*Under regulations prescribed by the Secretary or his delegate, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—*

"(A) *may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and*

"(B) *may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.*

"(5) INTEREST.—*The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary or his delegate) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.*

"(c) SPECIAL RULES.—

"(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—*For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.*

"(2) VALUATION OF ASSETS.—

"(A) IN GENERAL.—*For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary or his delegate.*

"(B) ELECTION WITH RESPECT TO BONDS.—*The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary or his delegate shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary or his delegate.*

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—*For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are*

reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

"(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—*For purposes of this section, if—*

"(A) *a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or*

"(B) *a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),*

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

"(5) CHANGE IN FUNDING METHOD OR IN PLAN YEAR REQUIRES APPROVAL.—*If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary or his delegate. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary or his delegate.*

"(6) FULL FUNDING.—*If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (g)) in excess of the full funding limitation—*

"(A) *the funding standard account shall be credited with the amount of such excess, and*

"(B) *all amounts described in paragraphs (2) (B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.*

"(7) FULL FUNDING LIMITATION.—*For purposes of paragraph (6), the term 'full funding limitation' means the excess (if any) of—*

"(A) *the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over*

"(B) *the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).*

"(8) CERTAIN RETROACTIVE PLAN AMENDMENTS.—*For purposes of this section, any amendment applying to a plan year which—*

"(A) *is adopted after the close of such plan year but no later than 2 and one-half months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),*

"(B) *does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and*

"(*C*) *does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,*

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of Labor notifying him of such amendment and the Secretary of Labor has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of Labor unless he determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (d)(2)) and that a waiver under subsection (d)(1) is unavailable or inadequate.

"(*9*) *3-year* VALUATION.—*For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary or his delegate.*

"(*10*) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—*For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary or his delegate.*

"(*d*) VARIANCE FROM MINIMUM FUNDING STANDARD.—

"(*1*) WAIVER IN CASE OF SUBSTANTIAL BUSINESS HARDSHIP.—*If an employer, or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan, are unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary or his delegate may waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under subsection (b)(2)(C). The Secretary or his delegate shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.*

"(*2*) DETERMINATION OF SUBSTANTIAL BUSINESS HARDSHIP.—*For purposes of this section, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether or not—*

"(*A*) *the employer is operating at an economic loss,*

"(*B*) *there is substantial unemployment or underemployment in the trade or business and in the industry concerned,*

"(C) the sales and profits of the industry concerned are depressed or declining, and

"(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

"(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section, the term 'waived funding deficiency' means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C)) for a plan year waived by the Secretary or his delegate and not satisfied by employer contributions.

"(e) EXTENSION OF AMORTIZATION PERIODS.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any plan may be extended by the Secretary of Labor for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

"(1) result in—

"(A) a substantial risk to the voluntary continuation of the plan, or

"(B) a substantial curtailment of pension benefit levels or employee compensation, and

"(2) be adverse to the interests of plan participants in the aggregate.

"(f) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—

"(1) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under subsection (d)(1) or an extension of time under subsection (e) is in effect with respect to the plan, or if a plan amendment described in subsection (c)(8) has been made at any time in the preceding 12 months (24 months for multiemployer plans). If a plan is amended in violation of the preceding sentence, any such waiver or extension of time shall not apply to any plan year ending on or after the date on which such amendment is adopted.

"(2) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

"(A) the Secretary of Labor determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

"(B) only repeals an amendment described in subsection (c)(8), or

"(C) is required as a condition of qualification under this part.

"(g) ALTERNATIVE MINIMUM FUNDING STANDARD.—

"(1) IN GENERAL.—A plan which uses a funding method that requires contributions in all years not less than those required

under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this subsection.

"(2) CHARGES AND CREDITS TO ACCOUNT.—*For a plan year the alternative minimum funding standard account shall be—*

"(A) *charged with the sum of—*

"(i) *the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,*

"(ii) *the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and*

"(iii) *an amount equal to the excess (if any) of credits to the alternative minimum standard account for all prior plan years over charges to such account for all such years, and*

"(B) *credited with the amount considered contributed by the employer to or under the plan for the plan year.*

"(3) SPECIAL RULES.—*The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under subsection (b)(5) with respect to the funding standard account.*

"(h) EXCEPTIONS.—*This section shall not apply to—*

"(1) *any profit-sharing or stock bonus plan,*

"(2) *any insurance contract plan described in subsection (i),*

"(3) *any governmental plan (within the meaning of section 414(d)),*

"(4) *any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,*

"(5) *any plan which has not, at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974, provided for employer contributions, or*

"(6) *any plan established and maintained by a society, order, or association described in section 501(c) (8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.*

No plan described in paragraph (3), (4), or (6) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on the day before the date of the enactment of the Employee Retirement Income Security Act of 1974.

"(i) CERTAIN INSURANCE CONTRACT PLANS.—*A plan is described in this subsection if—*

"(1) *the plan is funded exclusively by the purchase of individual insurance contracts,*

"(2) *such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the*

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case of an increase in benefits, commencing at the time such increase becomes effective),

"(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

"(4) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

"(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

"(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary or his delegate to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection."

(b) Excise Tax on Failure To Meet Minimum Funding Standards.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"Chapter 43—Qualified Pension, Etc., Plans

"Sec. 4971. Taxes on failure to meet minimum funding standards.

"SEC. 4971. TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS

"(a) Initial Tax.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 5 percent on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year. The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(b) Additional Tax.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected. The tax imposed by this subsection shall be paid by the employer described in subsection (a).

"(c) Definitions.—For purposes of this section—

"(1) Accumulated funding deficiency.—The term 'accumulated funding deficiency' has the meaning given to such term by the last sentence of section 412(a).

"(2) Correct.—The term 'correct' means, with respect to an accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

"(3) CORRECTION PERIOD.—*The term 'correction period' means' with respect to an accumulated funding deficiency, the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b), extended—*

"(A) *by any period in which a deficiency cannot be assessed under section 6213(a), and*

"(B) *by any other period which the Secretary or his delegate determines is reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero under this section.*

"(d) NOTIFICATION OF THE SECRETARY OF LABOR.—*Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary or his delegate shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—*

"(1) *to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency, or*

"(2) *to comment on the imposition of such tax.*

"(e) *Cross References.—*

"For disallowance of deductions for taxes paid under this section, see section 275.

"For liability for tax in case of an employer party to collective bargaining agreement, see section 413(b)(6).

"For provisions concerning notification of Secretary of Labor of imposition of tax under this section, waiver of the tax imposed by subsection (b), and other coordination between Secretary of the Treasury and Secretary of Labor with respect to compliance with this section, see section 3002(b) of title III of the Employee Retirement Income Security Act of 1974.".

(c) AMENDMENTS TO SECTION 404.—

(1) *Paragraph (1) of section 404(a) (relating to deduction for employer contributions to pension trusts) is amended to read as follows:*

"(1) PENSION TRUSTS.

"(A) IN GENERAL.—*In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows:*

"(i) *the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),*

"(ii) *the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each*

such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years,

"(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary or his delegate.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 412, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 412.

"(B) SPECIAL RULE IN CASE OF CERTAIN AMENDMENTS.—In the case of a plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary or his delegate), if the full funding limitation determined under section 412(c)(7) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 412(c)(7)(B) exceeds the amount determined under section 412(c)(7)(A), and if the funding method and the actuarial assumptions used are those used for such year under section 412, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

"(i) the full funding limitation for such year determined by applying section 412(c)(7) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

"(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary or his delegate to carry out the purposes of this subparagraph.

"(C) ALTERNATE TRANSFER OF TERMS.—*In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 167(l)(3)(A)(iii), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words 'plan amendment' the words 'plan amendment or increase in benefits payable under title II of the Social Security Act'. For purposes of this subparagraph, the term 'controlled group' has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).*

"(D) CARRYOVER.—*Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations.*"

(2) *Paragraph (6) of section 404(a) (relating to taxpayers on accrual basis) is amended to read as follows:*

"(6) TIME WHEN CONTRIBUTIONS DEEMED MADE.—*For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).*"

(3) *Paragraph (7) of section 404(a) (relating to limit on deductions) is amended to read as follows:*

"(7) LIMIT ON DEDUCTIONS.—*If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year). In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but*

the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust or a trust and an annuity plan."

(d) Alternative Amortization Method for Certain Multiemployer Plans.—

(1) General rule.—In the case of any multiemployer plan (as defined in section 414(f) of the Internal Revenue Code of 1954) to which section 412 of such Code applies, if—

(A) on January 1, 1974, the contributions under the plan were based on a percentage of pay,

(B) the actuarial assumptions with respect to pay are reasonably related to past and projected experience, and

(C) the rates of interest under the plan are determined on the basis of reasonable actuarial assumptions,

the plan may elect (in such manner and at such time as may be provided under regulations prescribed by the Secretary of the Treasury or his delegate) to fund the unfunded past service liability under the plan existing as of the date 12 months following the first date on which such section 412 first applies to the plan by charging the funding standard account with an equal annual percentage of the aggregate pay of all participants in the plan in lieu of the level dollar charges to such account required under clauses (i), (ii), and (iii) of section 412(b)(2)(B) of such Code and section 302(b)(2)(B)(i), (ii), and (iii) of this Act.

(2) Limitation.—In the case of a plan which makes an election under paragraph (1), the aggregate of the charges required under such paragraph for a plan year shall not be less than the interest on the unfunded past service liabilities described in clauses (i), (ii), and (iii) of section 412(b)(2)(B) of the Internal Revenue Code of 1954.

SEC. 1014. COLLECTIVELY BARGAINED PLANS, ETC.

Subpart B of part I of subchapter D of chapter 1 (relating to special rules) is amended by inserting after section 412 the following new section:

"SEC. 413. COLLECTIVELY BARGAINED PLANS, ETC.

"(a) Application of Subsection (b).—Subsection (b) applies to—

"(1) a plan maintained pursuant to an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

"(2) each trust which is a part of such plan.

"(b) General Rule.—If this subsection applies to a plan, notwithstanding any other provision of this title—

"(1) Participation.—Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit

computation formula under the plan were employed by a single employer.

"(2) DISCRIMINATION, ETC.—*Sections 401(a)(4) and 411 (d)(3) shall be applied as if all participants who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement were employed by a single employer.*

"(3) EXCLUSIVE BENEFIT.—*For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.*

"(4) VESTING.—*Section 411 (other than subsection (d) (3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.*

"(5) FUNDING.—*The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.*

"(6) LIABILITY FOR FUNDING TAX.—*For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate—*

"(A) *first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and*

"(B) *then on the basis of their respective liabilities for contributions under the plan.*

"(7) DEDUCTION LIMITATIONS.—*Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate.*

"(8) EMPLOYEES OF LABOR UNIONS.—*For purposes of this subsection, employees of employee representatives shall be treated as employees of an employer described in subsection (a)(1) if such representatives meet the requirements of sections 401(a)(4) and 410 with respect to such employees.*

"(c) PLANS MAINTAINED BY MORE THAN ONE EMPLOYER.—*In the case of a plan maintained by more than one employer—*

"(1) PARTICIPATION.—*Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer.*

"(2) *Exclusive benefit.*—*For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees.*

"(3) *Vesting.*—*Section 411 shall be applied as if all employers who maintain the plan constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.*

"(4) *Funding.*—*The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.*

"(5) *Liability for funding tax.*—*For a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate—*

"(A) *first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and*

"(B) *then on the basis of their respective liabilities for contributions under the plan.*

"(6) *Deduction Limitations.*—*Each applicable limitation provided by section 404 (a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate.*

Allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this purpose by the Secretary or his delegate."

SEC. 1015. DEFINITIONS AND SPECIAL RULES.

Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 413 the following new section:

"SEC. 414. DEFINITIONS AND SPECIAL RULES.

"(a) *Service for Predecessor Employer.*—*For purposes of this part—*

"(1) *in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and*

"(2) *in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary or his delegate, be treated as service for the employer.*

"(b) EMPLOYEES OF CONTROLLED GROUP OF CORPORATIONS.—*For purposes of sections 401, 410, 411, and 415, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 412, the tax imposed by section 4971, and the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary or his delegate.*

"(c) EMPLOYEES OF PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—*For purposes of sections 401, 410, 411, and 415, under regulations prescribed by the Secretary or his delegate, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).*

"(d) GOVERNMENTAL PLAN.—*For purposes of this part, the term 'governmental plan' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term 'governmental plan' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669).*

"(e) CHURCH PLAN.—

"(1) IN GENERAL.—*For purposes of this part the term 'church plan' means—*

"(A) *a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501, or*

"(B) *a plan described in paragraph (3).*

"(2) CERTAIN UNRELATED BUSINESS OR MULTIEMPLOYER PLANS.—*The term 'church plan' does not include a plan—*

"(A) *which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513), or*

"(B) *which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501.*

"(3) SPECIAL TEMPORARY RULE FOR CERTAIN CHURCH AGENCIES UNDER CHURCH PLAN.—

"(A) *Notwithstanding the provisions of paragraph (2)(B), a plan in existence on January 1, 1974, shall be*

treated as a church plan if it is established and maintained by a church or convention or association of churches and one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501.

"(B) Subparagraph (A) shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974.

"(C) Subparagraph (A) shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

"(f) Multiemployer Plan.—

"(1) In general.—For purposes of this part, the term 'multiemployer plan' means a plan—

"(A) to which more than one employer is required to contribute,

"(B) which is maintained pursuant to a collective-bargaining agreement between employee representatives and more than one employer,

"(C) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions,

"(D) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

"(E) which satisfies such other requirements as the Secretary of Labor may by regulations prescribe.

"(2) Special rules.—For purposes of this subsection—

"(A) If a plan is a multiemployer plan within the meaning of paragraph (1) for any plan year, subparagraph (C) of paragraph (1) shall be applied by substituting '75 percent' for '50 percent' for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions.

"(B) All corporations which are members of a controlled group of corporations (within the meaning of section 1563 (a), determined without regard to section 1563(e)(3)(C)) shall be deemed to be one employer.

"(g) Plan Administrator.—For purposes of this part, the term 'plan administrator' means—

"(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

"(2) *in the absence of a designation referred to in paragraph (1)—*

"(A) *in the case of a plan maintained by a single employer, such employer,*

"(B) *in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or*

"(C) *in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary or his delegate may by regulation, prescribe.*

"(h) TAX TREATMENT OF CERTAIN CONTRIBUTIONS.—

"(1) IN GENERAL.—*Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—*

"(A) *to an employees' trust described in section 401(a), or*

"(B) *under a plan described in section 403(a) or 405(a), shall not be treated as having been made by the employer if it is designated as an employee contribution.*

"(2) DESIGNATION BY UNITS OF GOVERNMENT.—*For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.*

"(i) DEFINED CONTRIBUTION PLAN.—*For purposes of this part, the term 'defined contribution plan' means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.*

"(j) DEFINED BENEFIT PLAN.—*For purposes of this part, the term 'defined benefit plan' means any plan which is not a defined contribution plan.*

"(k) CERTAIN PLANS.—*A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—*

"(1) *for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan,*

"(2) *for purposes of sections 411(a)(7)(A) (relating to minimum vesting standards) and 415 (relating to limitations on benefits and contributions under qualified plans), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and*

"(3) *for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.*

"(*l*) MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—*A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) or 405 unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation.*"

SEC. 1016. CONFORMING AND CLERICAL AMENDMENTS.

(*a*) CONFORMING AMENDMENTS.—

(*1*) *Section 275(a) (relating to denial of deduction for certain taxes) is amended by adding at the end thereof the following new paragraph:*

"(*6*) *Taxes imposed by chapter 42 and chapter 43.*"

(*2*) *Section 401(a) (relating to requirements for qualification) is amended—*

(*A*) *by striking out paragraph (3) and inserting in lieu thereof:*

"(*3*) *if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and*",

(*B*) *by striking out "paragraph (3)(B) or (4)" in paragraph (5) and inserting in lieu thereof "paragraph (4) or section 410(b) (without regard to paragraph (1)(A) thereof)", and*

(*C*) *by striking out paragraph (7) and inserting in lieu thereof:*

"(*7*) *A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).*"

(*3*) *Section 404(a)(2) (relating to deduction for contributions of an employer to an employee's annuity plan) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)".*

(*4*) *Section 406(b)(1) (relating to certain employees of foreign subsidiaries) is amended by striking out "paragraphs (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)".*

(*5*) *Section 407(b)(1) (relating to certain employees of domestic subsidiaries engaged in business outside the United States) is amended by striking out "paragraph (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)".*

(6) Section 805(d)(1)(C) (relating to definition of pension plan reserves) is amended by striking out "and (8)" and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)".

(7) Section 6161(b)(1) (relating to extensions of time for paying tax) is amended by striking out "or 42" and inserting in lieu thereof "42 or 43". The second sentence of section 6161(b) is amended by striking out "or 42" and inserting in lieu thereof ", 42, or chapter 43".

(8) Section 6201(d) (relating to assessment authority) is amended by striking out "and chapter 42" and inserting in lieu thereof ", chapter 42, and chapter 43".

(9) Section 6211 (defining deficiency) is amended—

(A) by striking out so much of subsection (a) as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"(a) IN GENERAL.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 42 and 43, the term 'deficiency' means the amount by which the tax imposed by subtitle A or B, or chapter 42 or 43, exceeds the excess of—"; and

(B) by striking out "chapter 42" in subsection (b)(2) and inserting in lieu thereof "chapter 42 or 43".

(10) Section 6212 (relating to notice of deficiency) is amended—

(A) by striking out "chapter 42" in subsection (a) and inserting in lieu thereof "chapter 42 or 43",

(B) by striking out "or chapter 42" in subsection (b)(1) and inserting in lieu thereof "chapter 42, or chapter 43",

(C) by striking out "chapter 42, and this chapter" in subsection (b)(1) and inserting in lieu thereof "chapter 42, chapter 43, and this chapter", and

(D) by striking out "of the same decedent," in subsection (c) and inserting in lieu thereof "of the same decedent, of chapter 43 tax for the same taxable years,".

(11) Section 6213 (relating to restrictions applicable to deficiencies and petition to Tax Court) is amended—

(A) by striking out "or chapter 42" in subsection (a) and inserting in lieu thereof ", chapter 42 or 43",

(B) by striking out the heading of subsection (e) and inserting in lieu thereof:

"(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXCISE TAXES.—",

(C) by striking out "or 4945 (relating to taxes on taxable expenditures)" in subsection (e) and inserting in lieu thereof "4945 (relating to taxes on taxable expenditures), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions)"; and

(D) by striking out "or 4945(h)(2)" in subsection (e) and inserting in lieu thereof ", 4945(i)(2), 4971(c)(3), or 4975(f)(4),".

(12) Section 6214 (relating to determinations by Tax Court) is amended—

(A) by amending the heading of subsection (c) to read as follows:

"(c) TAXES IMPOSED BY SECTION 507 OR CHAPTER 42 OR 43.—",

(B) by inserting after "chapter 42" each place it appears in subsection (c) "or 43"; and

(C) by striking out "chapter 42" in subsection (d) and inserting in lieu thereof "chapter 42 or 43".

(13) Section 6344(a)(1) (relating to cross references) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(14) Section 6501(e)(3) (relating to limitations on assessment and collection) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(15) Section 6503 (relating to suspension of running of period of limitations) is amended—

(A) by striking out "chapter 42 taxes)" in subsection (a)(1) and inserting in lieu thereof "certain excise taxes)", and

(B) by inserting after "section 507" in subsection (h) "or section 4971 or section 4975", and by striking out "or 4945(h)(2)" in subsection (h) and inserting in lieu thereof "4945(i)(2), 4971(c)(3), or 4975(f)(4)".

(16) Section 6512 (relating to limitations in case of petition to Tax Court) is amended by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 43".

(17) Section 6601(d) (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) is amended by—

(A) striking out in the heading thereof "CHAPTER 42" and inserting in lieu thereof "CHAPTER 42 OR 43", and

(B) striking out "chapter 42" and inserting in lieu thereof "certain excise".

(18) Section 6653(c)(1) (relating to income, estate, gift, and chapter 42 taxes) is amended by striking out "chapter 42" each place it appears therein (including the heading) and inserting in lieu thereof "certain excise".

(19) Section 6659(b) (relating to applicable rules) is amended by striking out "chapter 42" and inserting in lieu thereof "certain excise".

(20) Section 6676(b) (relating to failure to supply identifying numbers) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(21) Section 6677(b) (relating to failure to file information returns with respect to certain foreign trusts) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(22) Section 6679(b) (relating to failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(23) Section 6682(b) (relating to false information with respect to withholding allowances based on itemized deductions) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(24) The heading of section 6861 (relating to jeopardy assessments of income, estate, and gift taxes) is amended by striking out "and gift taxes.", and inserting in lieu thereof ", gift, and certain excise taxes."

(25) Section 6862 (relating to jeopardy assessment of taxes other than income, estate, and gift taxes) is amended—

(A) by striking out "and Gift Taxes.", in the heading and inserting in lieu thereof ", Gift, and Certain Excise Taxes.",

(B) by striking out "and gift tax)" in subsection (a) and inserting in lieu thereof "gift tax, and certain excise taxes)".

(26) Section 7422 (relating to civil actions for refund) is amended—

(A) by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43" in subsection (e),

(B) by striking out "CHAPTER 42" in the heading of subsection (g) and inserting in lieu thereof "CHAPTER 42 OR 43",

(C) by striking out " or 4945" in subsection (g)(1) and inserting in lieu thereof "4945, 4971, or 4975",

(D) by striking out "section 4945(a) (relating to initial taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(a) (relating to initial taxes on taxable expenditures), 4971(a) (relating to initial tax on failure to meet minimum funding standard), 4975(a) (relating to initial tax on prohibited transactions)",

(E) by striking out "or section 4945(b) (relating to additional taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(b) (relating to additional taxes on taxable expenditures), section 4971(b) (relating to additional tax on failure to meet minimum funding standard), or section 4975(b) (relating to additional tax on prohibited transactions)", and

(F) by striking out "or 4945" in paragraphs (2) and (3) of subsection (g) and inserting in lieu therof "4945, 4971, or 4975".

(27) Section 6204(b) (relating to supplemental assessments) is amended by striking out "and gift taxes" and inserting in lieu thereof "gift, and certain excise taxes".

(b) CLERICAL AMENDMENTS.—

(1) Part I of subchapter D of chapter 1 is amended by inserting after the heading and before the table of sections the following:

"Subpart A. General rule.
"Subpart B. Special rules.

"SUBPART A—GENERAL RULE".

(2) The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"CHAPTER 43. Qualifid pension, etc., plans."

(3) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to the section captioned "Assessable penalties with respect to information required to be furnished under section 7654" and inserting in lieu thereof:

"Sec. 6688 Assessable Penalties With Respect to Information Required to be Furnished Under Section 7654."

(4) Subchapter B of chapter 68 is amended by striking out the heading of the section immediately preceding section 6689 and inserting in lieu thereof:

"SEC. 6688. ASSESSABLE PENALTIES WITH RESPECT TO INFORMATION REQUIRED TO BE FURNISHED UNDER SECTION 7654."

(5) The table of sections for part II of subchapter A of chapter 70 is amended by striking out "and gift taxes" in the items relating to sections 6861 and 6862 and inserting in lieu thereof "gift, and certain excise taxes".

SEC. 1017. EFFECTIVE DATES AND TRANSITIONAL RULES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part shall apply for plan years beginning after the date of the enactment of this Act.

(b) EXISTING PLANS.—Except as otherwise provided in subsections (c) through (h), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply for plan years beginning after December 31, 1975.

(c) EXISTING PLANS UNDER COLLECTIVE BARGAINING AGREEMENTS.—

(1) APPLICATION OF VESTING RULES TO CERTAIN PLAN PROVISIONS.—

(A) USUAL APPLICATION WAIVED.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, during the special temporary waiver period the plan shall not be treated as not meeting the requirements of section 411(b)(1) or (2) of the Internal Revenue Code of 1954 solely by reason of a supplementary or special plan provision (within the meaning of subparagraph (D)).

(B) SPECIAL TEMPORARY WAIVER PERIOD.—For purposes of this paragraph, the term "special temporary waiver period" means plan years beginning after December 31, 1975, and before the earlier of—

(i) the date on which the last of the collective bargaining agreements relating to the plan terminates (de-

termined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) January 1, 1981.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act shall not be treated as a termination of such collective bargaining agreement.

(C) Determination by Secretary of Labor required.—Subparagraph (A) shall not apply unless the Secretary of Labor determines that the participation and vesting rules in effect on the date of the enactment of this Act are not less favorable to the employees, in the aggregate, than the rules provided under sections 410 and 411 of the Internal Revenue Code of 1954.

(D) Supplementary or special plan provisions.—For purposes of this paragraph, the term "supplementary or special plan provision" means any plan provision which—

(i) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant with a survivor annuity for the life of his spouse, or

(ii) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(2) Application of funding rules.—

(A) In general.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, section 412 of the Internal Revenue Code of 1954, and other amendments made by this part to the extent such amendments relate to such section 412, shall not apply during the special temporary waiver period (as defined in paragraph (1)(B)).

(B) Interim law granting waiver of underfunding.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, if by reason of subparagraph (A) the requirements of section 401(a)(7) of the Internal Revenue Code of 1954 apply without regard to the amendment of such section 401(a)(7) by section 1016(a)(2)(C) of this Act, the plan shall not be treated as not meeting such requirements solely by reason of the application of the amendments made by sections 1011 and 1012 of this Act or related amendments made by this part.

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(*d*) *Existing Plans May Elect New Provisions.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act but before the applicable effective date determined under subsection (b) or (c)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.*

(*e*) *Certain Definitions and Special Rules.—Section 414 of the Internal Revenue Code of 1954 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act, shall take effect on the date of the enactment of this Act.*

(*f*) *Transitional Rules With Respect to Breaks in Service.—*

(*1*) *Participation.—In the case of a plan to which section 410 of the Internal Revenue Code of 1954 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 410 first becomes effective with respect to such plan) provides that any employee's participation in the plan would commence at any date later than the later of—*

(*A*) *the date on which his participation would commence under the break in service rules of section 410(a)(5) of such Code, or*

(*B*) *the date on which his participation would commence under the plan as in effect on January 1, 1974,*

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code.

(*2*) *Vesting.—In the case of a plan to which section 411 of the Internal Revenue Code of 1954 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 411 first becomes effective with respect to such plan) provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—*

(*A*) *the break in service rules of section 411(a)(6) of such Code, or*

(*B*) *the plan as in effect on January 1, 1974,*

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code. Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

(g) 3-Year Delay for Certain Provisions.—Subparagraphs (B) and (C) of section 404(a)(1) shall apply only in the case of plan years beginning on or after 3 years after the date of the enactment of this Act.

(h)(1) Except as provided in paragraph (2), section 413 of the Internal Revenue Code of 1954 shall apply to plan years beginning after December 31, 1953.

(2)(A) For plan years beginning before the applicable effective date of section 410 of such Code, the provisions of paragraphs (1) and (8) of subsection (b) of such section 413 shall be applied by substituting "401(a)(3)" for "410".

(B) For plan years beginning before the applicable effective date of section 411 of such Code, the provisions of subsection (b)(2) of such section 413 shall be applied by substituting "401(a)(7)" for "411(d)(3)".

(C)(i) The provisions of subsection (b)(4) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 411 of such Code.

(ii) The provisions of subsection (b)(5) (other than the second sentence thereof) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 412 of such Code.

PART 2—CERTAIN OTHER PROVISIONS RELATING TO QUALIFIED RETIREMENT PLANS

SEC. 1021. ADDITIONAL PLAN REQUIREMENTS.

(a) Joint and Survivor Annuity Requirement.—

(1) In general.—Effective with respect to plan years beginning after December 31, 1975, section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (10) the following new paragraph:

"(11)(A) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of an annuity unless such plan provides for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

"(B) Notwithstanding the provisions of subparagraph (A), in the case of a plan which provides for the payment of benefits before the normal retirement age (as defined in section 411 (a)(8)), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

"(i) the date the employee reaches the earliest retirement age under the plan, or

"(ii) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

"(C) A plan described in subparagraph (B) does not meet the requirements of subparagraph (A) unless, under the plan, a participant has a reasonable period during which he may elect the

qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subparagraph (B) ends and ending on the date on which he reaches normal retirement age (as defined in section 411(a)(8)) if he continues his employment during that period. A plan does not meet the requirements of this subparagraph unless, in the case of such an election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he made an election described in this subparagraph immediately prior to his retirement and if his retirement had occurred on the day before his death and within the period within which an election can be made.

"(D) A plan shall not be treated as not satisfying the requirements of this paragraph solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election described in subparagraph (C) has been made under subparagraph (C)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

"(E) A plan shall not be treated as satisfying the requirements of this paragraph unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary or his delegate by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subparagraph) not to take such joint and survivor annuity.

"(F) A plan shall not be treated as not satisfying the requirements of this paragraph solely because under the plan there is a provision that any election described in subparagraph (C) or (E), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

"(i) the participant dies from accidental causes,

"(ii) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

"(iii) such election or revocation is made before such accident occurred.

"(G) For purposes of this paragraph—

"(i) the term 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability),

"(*ii*) *the term 'earliest retirement age' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, and*

"(*iii*) *the term 'qualified joint and survivor annuity' means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the participant.*

For purposes of this paragraph, a plan may take into account in any equitable manner (as determined by the Secretary or his delegate) any increased costs resulting from providing joint and survivor annuity benefits.

"(*H*) *This paragraph shall apply only if—*

"(*i*) *the annuity starting date did not occur before the effective date of this paragraph, and*

"(*ii*) *the participant was an active participant in the plan on or after such effective date.*"

(*2*) *Certain additional requirements apply only to plans to which vesting requirements apply.—Section 401(a) (relating to requirements for qualification) is amended by adding at the end thereof the following new sentence: "Paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section."*

(*b*) *Requirements in Case of Mergers and Consolidations of Plans or Transfers of Plan Assets.—Effective with respect to plan years beginning after December 31, 1975, section 401(a) is amended by inserting after paragraph (11) the following new paragraph:*

"(*12*) *A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation.*"

(*c*) *Retirement Benefits May Not Be Assigned or Alienated.—Section 401(a) is amended by inserting after paragraph (12) the following new paragraph:*

"(*13*) *A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken*

into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975 (d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on the date of the enactment of the Employee Retirement Income Security Act of 1974."

(d) Requirement That Payment of Benefits Begin Not Later Than When the Participant Attains Age 65 or Has Completed 10 Years of Participation.—Section 401(a) is amended by inserting after paragraph (13) the following new paragraph:

"(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

"(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

"(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

"(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benfit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of his delegate."

(e) Requirement That Plan Benefits Are Not Decreased by Certain Social Security Increases.—Section 401(a) is amended by inserting after paragraph (14) the following new paragraph:

"(15) a trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

"(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

"(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such

increase takes place after the date of the enactment of the Employee Retirement Income Security Act of 1974 or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be."

(*f*) REQUIREMENT OF NONFORFEITABILITY IN CASE OF CERTAIN WITHDRAWALS.—*Section 401(a) is amended by inserting after paragraph (18) the following new paragraph:*

"*(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before enactment of the Employee Retirement Income Security Act of 1974, in the event of withdrawal of certain mandatory contributions).*"

(*g*) REQUIREMENT OF NO FURTHER SOCIAL SECURITY INTEGRATION IN EXCESS OF CERTAIN LIMITS.—

(1) A pension, profit-sharing, or stock bonus plan shall be treated as not meeting the requirements of section 401(a)(3)(B) or (4) of the Internal Revenue Code of 1954, or section 401(d)(6) of such Code (or, after the effective date of the amendments made by section 1016 of this Act, section 401(a)(3), section 401(a)(4), section 401(d)(6), or section 410 of such Code) if it does not meet the requirements of Revenue Ruling 71–446 without taking into account any amendment made to title II of the Social Security Act after December 31, 1971.

(2) Paragraph (1) shall not apply to any plan which met the requirements of such revenue ruling on June 27, 1974, unless—

(A) the plan is amended after that date to take into account a greater level of benefits or a greater wage base under such title II, or

(B) such plan takes into account a greater level of benefits or a greater wage base than that in effect under such title on June 27, 1974 (and, for purposes of this subparagraph, the level of benefits is determined without regard to any increase therein under section 215 of the Social Security Act after that date, and the wage base is determined without regard to any increase therein under section 230 of that Act).

If it is necessary to amend the plan in order for the provisions of subparagraph (B) not to apply to it, a plan will be treated as a plan not described in subparagraph (B) if the necessary amendment is made not later than June 30, 1975, and applies to the period beginning on January 1, 1975.

(3) This subsection takes effect on the date of enactment of this Act and ceases to be effective on July 1, 1976.

SEC. 1022. MISCELLANEOUS PROVISIONS.

(a) Requirement That Plan Not Be Discriminatory.—Section 401(a)(4) (disqualifying discriminatory plans) is amended to read as follows:

"(4) If the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

"(A) officers,

"(B) shareholders, or

"(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(2)(A) and (C)."

(b) Amendments Relating to Self-Employed Individuals and Owner-Employees.—

(1) Amendment of section (401)(a)(10).—So much of subparagraph (A) of section 401(a)(10) as precedes clause (i) thereof is amended to read as follows:

"(A) paragraph (3), the first and second sentences of paragraph (5), and section 410 shall not apply, but—".

(2) Amendment of section (401)(d)(3).—Section 401(d)(3) (relating to additional requirements for qualification of trusts and and plans benefiting owner-employees) is amended to read as follows:

"(3)(A) The plan benefits each employee having 3 or more years of service (within the meaning of section 410(a)(3)).

"(B) For purposes of subparagraph (A), the term 'employee' does not include—

"(i) any employee included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A), and

"(ii) any employee who is a nonresident alien individual described in section 410(b)(2)(C)."

(c) Persons Other Than Banks May Be Trustees of Trusts Benefiting Owner-Employees.—

(1) The first sentence of section 401(d)(1) is amended to read as follows: "In the case of a trust which is created on or after October 10, 1962, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, or exchanges)."

(2) The second sentence of section 401(d)(1) is amended by striking out "the date of the enactment of this subsection" and inserting in lieu thereof "October 10, 1962,".

(d) Certain Custodial Accounts.—Effective as of January 1, 1974, subsection (f) of section 401 (relating to certain custodial accounts) is amended to read as follows:

"(f) Certain Custodial Accounts and Annuity Contracts.—For purposes of this title, a custodial account or an annuity contract shall be treated as a qualified trust under this section if—

"(1) the custodial account or annuity contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

"(2) in the case of a custodial account the assets thereof are held by a bank (as defined in subsection (d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or annuity contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof."

(e) Custodial Accounts for Regulated Investment Company Stock.—Effective as of January 1, 1974, section 403 (b) (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end thereof the following new paragraph:

"(7) Custodial accounts for regulated investment company stock.—

"(A) Amounts paid treated as contributions.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account.

"(B) Account treated as plan.—For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

"(C) Regulated investment company.—For purposes of this paragraph, the term 'regulated investment company' means a domestic corporation which is a regulated investment company within the meaning of section 851(a), and which issues only redeemable stock."

(f) Insured Credit Unions.—Effective as of January 1, 1974, the last sentence of section 401(d)(1) is amended by striking out "section 581," and inserting in lieu thereof "section 581, an insured credit

union (within the meaning of section 101(6) of the Federal Credit Union Act),".

(g) Public Inspection of Certain Information With Respect to Pension, Profit-Sharing, and Stock Bonus Plans.—

(1) Amendment of section 6104(a).—Paragraph (1) of section 6104(a) (relating to public inspection of applications for tax exemption) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D) and by inserting after subparagraph (A) the following new subparagraphs:

"(B) Pension, etc., plans.—The following shall be open to public inspection at such times and in such places as the Secretary or his delegate may prescribe:

"(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b),

"(ii) any application filed with respect to the exemption from tax under section 501(a) of an organization forming part of a plan or account referred to in clause (i),

"(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

"(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

Except in the case of a plan participant, this subparagraph shall not apply to any plan referred to in clause (i) having not more than 25 participants.

"(C) Certain names and compensation not to be opened to public inspection.—In the case of any application, document, or other papers, referred to in subparagraph (B), information from which the compensation (including deferred compensation) of any individual may be ascertained shall not be opened to public inspection under subparagraph (B)."

(B) The heading of subparagraph (A) of section 6104(a)(1) is amended to read as follows:

"(A) Organizations described in section 501.—".

(C) The heading of subparagraph (D) of section 6104(a)(1) as redesignated by subparagraph (A) of this paragraph) is amended to read as follows:

"(D) Withholding of certain other information.—".

(D) Subparagraph (D) of section 6104(a)(1) (as so redesignated) is amended by striking out "subparagraph (A)" each place it appears and inserting in lieu thereof "subparagraph (A) or (B)".

(2) Amendment of section 6104(a)(2).—Subparagraph (A) of section 6104(a)(2) is amended by adding at the end thereof "any

application referred to in subparagraph (B) of subsection (a) (1) of this section, and".

(3) Amendment of section 6104(b).—Section 6104(b) (relating to inspection of annual information returns) is amended by striking out "and 6056" and inserting in lieu thereof "6056, and 6058".

(4) Effective date.—The amendments made by this subsection shall apply to applications filed (or documents issued) after the date of enactment of this Act.

(h) Publicity of Returns.—Effective on the date of the enactment of this Act, section 6103 (relating to publicity of returns and disclosure of information as to persons filing income tax returns) is amended by adding at the end thereof a new subsection (g) to read as follows:

"(g) Disclosure of Information With Respect to Deferred Compensation Plans.—The Secretary or his delegate is authorized to furnish—

"(1) returns with respect to any tax imposed by this title or information with respect to such returns to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of administration of Titles I and IV of the Employee Retirement Income Security Act of 1974, and

"(2) registration statements (as described in section 6057) and information with respect to such statements to the proper officers and employees of the Department of Health, Education, and Welfare for purposes of administration of section 1131 of the Social Security Act."

(i) Certain Puerto Rican Pension, Etc., Plans To Be Exempt From Tax Under Section 501(a).—

(1) General rule.—Effective for taxable years beginning after December 31, 1973, for purposes of section 501(a) of the Internal Revenue Code of 1954 (relating to exemption from tax), any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401(a) of such Code if such trust—

(A) forms part of a pension, profit-sharing, or stock bonus plan, and

(B) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

(2) Election to have provisions of, and amendments made by, title II of this act apply.—

(A) If the administrator of a pension, profit-sharing, or stock bonus plan which is created or organized in Puerto Rico elects, at such time and in such manner as the Secretary of the Treasury may require, to have the provisions of this paragraph apply, for plan years beginning after the date of election any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Internal Revenue Code of 1954.

(B) An election under subparagraph (A), once made, is irrevocable.

(C) This paragraph applies to plan years beginning after the date of enactment of this Act.

(D) The source of any distributions made under a plan which makes an election under this paragraph to participants and beneficiaries residing outside of the United States shall be determined, for purposes of subchapter N of chapter 1 of the Internal Revenue Code of 1954, by the Secretary of the Treasury in accordance with regulations prescribed by him. For purposes of this subparagraph the United States means the United States as defined in section 7701(a)(9) of the Internal Revenue Code of 1954.

(j) Year of Deduction for Certain Employer Contributions for Severance Payments Required by Foreign Law.—Effective for taxable years beginning after December 31, 1973, if—

(1) an employer is engaged in a trade or business in a foreign country,

(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1954 the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees.

(k) Receipts for Employees.—Section 6051 (relating to receipts for employees) is amended by inserting after "exemption," in subsection (a) the following: "or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash,".

SEC. 1023. RETROACTIVE CHANGES IN PLAN.

Section 401(b) (relating to certain retroactive changes in plan) is amended to read as follows:

"(b) Certain Retroactive Changes in Plan.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate, if all provisions of the plan which are necessary to satisfy such requirements are in

effect by the end of such period and have been made effective for all purposes for the whole of such period."

SEC. 1024. EFFECTIVE DATES.

Except as otherwise provided in section 1021, the amendments made by section 1021 shall apply to plan years to which part I applies. Except as otherwise provided in section 1022, the amendments made by section 1022 shall apply to plan years to which part I applies. Section 1023 shall take effect on the date of the enactment of this Act.

PART 3—REGISTRATION AND INFORMATION

SEC. 1031. REGISTRATION AND INFORMATION.

(a) Annual Registration and Information Returns.—Part III of subchapter A of chapter 61 (relating to information returns) is amended by adding at the end thereof the following new subpart:

"SUBPART E—REGISTRATION OF AND INFORMATION CONCERNING PENSION, ETC., PLANS

"Sec. 6057. Annual registration, etc.
"Sec. 6058. Information required in connection with certain plans of deferred compensation.
"Sec. 6059. Periodic report by actuary.

"SEC. 6057. ANNUAL REGISTRATION, ETC.

"(a) Annual Registration.—

"(1) General rule.—Within such period after the end of a plan year as the Secretary or his delegate may by regulations prescribe, the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 applies for such plan year shall file a registration statement with the Secretary or his delegate.

"(2) Contents.—The registration statement required by paragraph (1) shall set forth—

"(A) the name of the plan,

"(B) the name and address of the plan administrator,

"(C) the name and taxpayer identifying number of each participant in the plan—

"(i) who, during such plan year, separated from the service covered by the plan,

"(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

"(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

"(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

"(E) such other information as the Secretary or his delegate may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary or his delegate that he has complied with the requirement contained in subsection (e).

"(b) *Notification of Change in Status.*—*Any plan administrator required to register under subsection (a) shall also notify the Secretary or his delegate, at such time as may be prescribed by regulations, of—*

"(1) *any change in the name of the plan,*

"(2) *any change in the name or address of the plan administrator,*

"(3) *the termination of the plan, or*

"(4) *the merger or consolidation of the plan with any other plan or its division into two or more plans.*

"(c) *Voluntary Reports.*—*To the extent provided in regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may receive from—*

"(1) *any plan to which subsection (a) applies, and*

"(2) *any other plan (including any governmental plan or or church plan (within the meaning of section 414)),*

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred vested benefit rights of any participant separated from the service covered by the plan during any plan year.

"(d) *Transmission of Information to Secretary of Health, Education, and Welfare.*—*The Secretary or his delegate shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health, Education, and Welfare.*

"(e) *Individual Statement to Participant.*—*Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement.*

"(f) *Regulations.*—

"(1) *In general.*—*The Secretary, after consultation with the Secretary of Health, Education, and Welfare, may prescribe such regulations as may be necessary to carry out the provisions of this section.*

"(2) *Plans to which more than one employer contributes.*—*This section shall apply to any plan to which more than one employer is required to contribute only to the extent provided in regulations prescribed under this subsection.*

"(g) *Cross References.*—

"For provisions relating to penalties for failure to register or furnish statements required by this section, see section 6652(e) and section 6690.

"For coordination between Department of the Treasury and the Department of Labor with regard toadministration of this section, see section 3004 of the Employee Retirement Income Security Act of 1974.

"SEC. 6058. INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.

"(a) *In General.*—*Every employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred com-*

pensation described in part I of subchapter D of chapter 1, or the plan administrator (within the meaning of section 414(g)) of the plan, shall file an annual return stating such information as the Secretary or his delegate may by regulations prescribe with respect to the qualification, financial condition, and operations of the plan; except that, in the discretion of the Secretary or his delegate, the employer may be relieved from stating in its return any information which is reported in other returns.

"(b) Actuarial Statement in Case of Mergers, Etc.—Not less than 30 days before a merger, consolidation, or transfer of assets or liabilities of a plan described in subsection (a) to another plan, the plan administrator (within the meaning of section 414(g)) shall file an actuarial statement of valuation evidencing compliance with the requirements of section 401(a)(12).

"(c) Employer.—For purposes of this section, the term 'employer' includes a person described in section 401(c)(4) and an individual who establishes an individual retirement account or annuity described in section 408.

"(d) Cross References.—

"For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

"For coordination between the Department of the Treasury and the Department of Labor with respect to the information required under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974.".

(b) Sanctions.—

(1) Failure to file registration statements or notification of change in status.—

(A) Section 6652 (relating to failure to file certain information returns) is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsections:

"(e) Annual Registration and Other Notification by Pension Plan.—

"(1) Registration.—In the case of any failure to file a registration statement required under section 6057(a) (relating to annual registration of certain plans) which includes all participants required to be included in such statement, on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, an amount equal to $1 for each participant with respect to whom there is a failure to file, multiplied by the number of days during which such failure continues, but the total amount imposed under this paragraph on any person for any failure to file with respect to any plan year shall not exceed $5,000.

"(2) Notification of change of status.—In the case of failure to file a notification required under section 6057(b) (relating to notification of change of status) on the date prescribed therfor (determined with regard to any extension of time for

filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $1 for each day during which such failure continues, but the total amounts imposed under this paragraph on any person for failure to file any notification shall not exceed $1,000.

"(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.—*In the case of failure to file a return or statement required under section 6058 (relating to information required in connection with certain plans of deferred compensation) or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $10 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $5,000.*"

(B) (i) The section heading for section 6652 is amended by adding ", Registration Statements, etc." before the period at the end thereof.

(ii) The item relating to section 6652 in the table of contents for subchapter A of chapter 68 is amended by adding ", registration statements, etc." before the period of the end thereof.

(2) FAILURE TO FURNISH STATEMENT TO PARTICIPANT.—

(A) Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6690. FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATEMENT TO PLAN PARTICIPANT.

"*Any person required under section 6057(e) to furnish a statement to a participant who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6057(e), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.*"

(B) The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"*Sec. 6690. Fraudulent statement or failure to furnish statement to plan participant.*"

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for such part III is amended by adding at the end thereof the following:

"Subpart E. Registration of and information concerning pension, etc., plans."

(2) Section 6033(c) (relating to cross references) is amended by adding at the end thereof the following:

"For provisions relating to information required in connection with certain plans of deferred compensation, see section 6058."

(3) Subsection (d) of section 6047 (relating to information with respect to certain trusts and annuity and bond purchase plans) is amended to read as follows:

"(d) CROSS REFERENCES.—

"(1) For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

"(2) For criminal penalty for furnishing fraudulent information, see section 7207."

SEC. 1032. DUTIES OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE.

Title XI of the Social Security Act (relating to general provisions) is amended by adding at the end of part A thereof the following new section:

"NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO DEFERRED VESTED BENEFITS

SEC. 1131. (a) Whenever—

"(1) the Secretary makes a finding of fact and a decision as to—

"(A) the entitlement of any individual to monthly benefits under section 202, 223, or 228,

"(B) the entitlement of any individual to a lump-sum death payment payable under section 202 (i) on account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

"(C) the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or

"(2) the Secretary is requested to do so—

"(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of the Internal Revenue Code of 1954, or

"(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 204(d) of this Act,

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 with respect to the individual referred to in paragraph (1) or (2)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

"(b)(1) For purposes of section 201(g)(1), expenses incurred in the administration of subsection (a) shall be deemed to be expenses incurred for the administration of title II.

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"(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Secretary deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a)."

SEC. 1033. REPORTS BY ACTUARIES.

(a) REPORTS BY ACTUARIES.—Subpart E of part III of subchapter A of chapter 61 (relating to registration of and information concerning pension, etc., plans) as added by section 1031(a) of this Act, is amended by adding at the end thereof the following new section:

"SEC. 6059. PERIODIC REPORT OF ACTUARY.

"(a) GENERAL RULE.—The actuarial report described in subsection (b) shall be filed by the plan administrator (as defined in section 414(g)) of each defined benefit plan to which section 412 applies, for the first plan year for which section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary or his delegate determines that more frequent reports are necessary).

"(b) ACTUARIAL REPORT.—The actuarial report of a plan required by subsection (a) shall be prepared and signed by an enrolled actuary (within the meaning of section 7701(a)(35)) and shall contain—

"(1) a description of the funding method and actuarial assumptions used to determine costs under the plan,

"(2) a certification of the contribution necessary to reduce the accumulated funding deficiency (as defined in section 412(a)) to zero,

"(3) a statement—

"(A) that to the best of his knowledge the report is complete and accurate, and

"(B) the requirements of section 412(c) (relating to reasonable actuarial assumptions) have been complied with,

"(4) such other information as may be necessary to fully and fairly disclose the actuarial position of the plan, and

"(5) such other information regarding the plan as the Secretary or his delegate may by regulations require.

"(c) TIME AND MANNER OF FILING.—The actuarial report and statement required by this section shall be filed at the time and in the manner provided by regulations prescribed by the Secretary or his delegate.

"(d) CROSS REFERENCE.—

"For coordination between the Department of the Treasury and the Department of Labor with respect to the report required to be filed under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974.".

(b) ASSESSABLE PENALTIES.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6692. FAILURE TO FILE ACTUARIAL REPORT.

"The plan administrator (as defined in section 414(g)) of each defined benefit plan to which section 412 applies who fails to file the

report required by section 6059 at the time and in the manner required by section 6059, shall pay a penalty of $1,000 for each such failure unless it is shown that such failure is due to reasonable cause."

(c) Consolidation of Actuarial Reports.—The Secretary of the Treasury and the Secretary of Labor shall take such steps as may be necessary to assure coordination to the maximum extent feasible between the actuarial reports required by section 6059 of the Internal Revenue Code of 1954 and by section 103(d) of title I of the Employee Retirement Income Security Act of 1974.

(d) Clerical Amendment.—The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6692. Failure to file actuarial report.".

SEC. 1034. EFFECTIVE DATES.

This part shall take effect upon the date of the enactment of this Act; except that—

(1) the requirements of section 6059 of the Internal Revenue Code of 1954 shall apply only with respect to plan years to which part I of this title applies,

(2) the requirements of section 6057 of such Code shall apply only with respect to plan years beginning after December 31, 1975,

(3) the requirements of section 6058(a) of such Code shall apply only with respect to plan years beginning after the date of the enactment of this Act, and

(4) the amendments made by section 1032 shall take effect on January 1, 1978.

"PART 4—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

SEC. 1041. TAX COURT PROCEDURE.

(a) In General.—Subchapter C of chapter 76 (relating to the Tax Court) is amended by adding at the end thereof the following new part:

"PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

"Sec. 7476. Declaratory judgments.

"SEC. 7476. DECLARATORY JUDGMENTS.

"(a) Creation of Remedy.—In a case of actual controversy involving—

"(1) a determination by the Secretary or his delegate with respect to the initial qualification or continuing qualification of a retirement plan under subchapter D of chapter 1, or

"(2) a failure by the Secretary or his delegate to make a determination with respect to—

"(A) such initial qualification, or

"(B) such continuing qualification if the controversy arises from a plan amendment or plan termination,

upon the filing of an appropriate pleading, the United States Tax Court may make a declaration with respect to such initial qualification or continuing qualification. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(*b*) LIMITATIONS.—

"(*1*) PETITIONER.—*A pleading may be filed under this section only by a petitioner who is the employer, the plan administrator, an employee who has qualified under regulations prescribed by the Secretary or his delegate as an interested party for purposes of pursuing administrative remedies within the Internal Revenue Service, or the Pension Benefit Guaranty Corporation.*

"(*2*) NOTICE.—*For purposes of this section, the filing of a pleading by any petitioner may be held by the Tax Court to be premature, unless the petitioner establishes to the satisfaction of the court that he has complied with the requirements prescribed by regulations of the Secretary or his delegate with respect to notice to other interested parties of the filing of the request for a determination referred to in subsection (a).*

"(*3*) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—*The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Internal Revenue Service. A petitioner shall not be deemed to have exhausted his administrative remedies with respect to a failure by the Secretary or his delegate to make a determination with respect to initial qualification or continuing qualification of a retirement plan before the expiration of 270 days after the request for such determination was made.*

(*4*) PLAN PUT INTO EFFECT.—*No proceeding may be maintained under this section unless the plan (and, in the case of a controversy involving the continuing qualification of the plan because of an amendment to the plan, the amendment) with respect to which a decision of the Tax Court is sought has been put into effect before the filing of the pleading. A plan or amendment shall not be treated as not being in effect merely because under the plan the funds contributed to the plan may be refunded if the plan (or the plan as so amended) is found to be not qualified.*

"(*5*) TIME FOR BRINGING ACTION.—*If the Secretary or his delegate sends by certified or registered mail notice of his determination with respect to the qualification of the plan to the persons referred to in paragraph (1) (or, in the case of employees referred to in paragraph (1), to any individual designated under regulations prescribed by the Secretary or his delegate as a representative of such employee), no proceeding may be initiated under this section by any person unless the pleading is filed before the ninety-first day after the day after such notice is mailed to such person (or to his designated representative, in the case of an employee).*

"(*c*) COMMISSIONERS.—*The chief judge of the Tax Court may assign proceedings under this section to be heard by the commissioners of the*

court, and the court may authorize a commissioner to make the decision of the court with respect to such proceeding, subject to such conditions and review as the court may by rule provide.

"(*d*) RETIREMENT PLAN.—*For purposes of this section, the term 'retirement plan' means—*

"(*1*) *a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is part of such a plan,*

"(*2*) *an annuity plan described in section 403(a), or*

"(*3*) *a bond purchase plan described in section 405(a).*

"(*e*) CROSS REFERENCE.—

"For provisions concerning intervention by Pension Benefit Guaranty Corporation and Secretary of Labor in actions brought under this section and right of Pension Benefit Guaranty Corporation to bring action, see section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974."

(*b*) TECHNICAL AND CONFORMING AMENDMENTS.—

(*1*) FEE FOR FILING PETITION.—*Section 7451 (relating to fee for filing petition) is amended by striking out "deficiency" and inserting in lieu thereof "deficiency or for a declaratory judgment under part IV of this subchapter".*

(*2*) DATE OF DECISION.—*Section 7459(c) (relating to date of decision) is amended by inserting before the period at the end of the first sentence the following: "or, in the case of a declaratory judgment proceeding under part IV of this subchapter, the date of the court's order entering the decision".*

(*3*) VENUE FOR APPEAL OF DECISION.—

(*A*) *Section 7482(b)(1) (relating to venue) is amended by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or" and by inserting after subparagraph (B) the following new subparagraph:*

"(*C*) *in the case of a person seeking a declaratory decision under section 7476, the principal place of business, or principal office or agency of the employer."*

(*B*) *Section 7482(b)(1) is further amended—*

(*i*) *by striking out "neither subparagraph (A) nor (B) applies" and inserting in lieu thereof "subparagraph (A), (B), and (C) do not apply"; and*

(*ii*) *by inserting before the period at the end of the last sentence thereof the following: "or as of the time the petition seeking a declaratory decision under section 7476 was filed with the Tax Court".*

(*c*) CLERICAL AMENDMENT.—*The table of parts for subchapter C of chapter 76 (relating to the Tax Court) is amended by adding at the end thereof the following new item:*

"PART IV.—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS."

(*d*) EFFECTIVE DATE.—*The amendments made by this section shall apply to pleadings filed more than 1 year after the date of the enactment of this Act.*

PART 5—INTERNAL REVENUE SERVICE

SEC. 1051. ESTABLISHMENT OF OFFICE.

(a) In General.—Section 7802 (relating to Commissioner of Internal Revenue) is amended to read as follows:

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS.

"(a) Commissioner of Internal Revenue.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary.

"(b) Assistant Commissioner for Employee Plans and Exempt Organizations.—There is established within the Internal Revenue Service an office to be known as the 'Office of Employee Plans and Exempt Organizations' to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary or his delegate may prescribe with respect to organizations exempt from tax under section 501(a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies)."

(b) Salaries.—

(1) Assistant commissioner.—Section 5109 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1954 is classified at GS–18, and is in addition to the number of positions authorized by section 5108(a) of this title."

(2) Classification of positions at GS–16 and 17.—Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) In addition to the number of positions authorized by subsection (a), the Commissioner of Internal Revenue is authorized, without regard to any other provision of this section, to place a total of 20 positions in the Internal Revenue Service in GS–16 and 17.".

(c) Clerical Amendments.—The item relating to section 7802 in the table of sections for subchapter A of chapter 80 is amended to read as follows:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)."

(d) Effective Date.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act.

SEC. 1052. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Department of the Treasury for the purpose of carrying out all functions of the Office of Employee Plans and Exempt Organizations for each fiscal year beginning after June 30, 1974, an amount equal to the sum of—

(1) so much of the collections from the taxes imposed under section 4940 of such Code (relating to excise tax based on investment income) as would have been collected if the rate of tax under such section was 2 percent during the second preceding fiscal year, and

(2) the greater of—

(A) an amount equal to the amount described in paragraph (1), or

(B) $30,000,000.

Subtitle B—Other Amendments to the Internal Revenue Code Relating to Retirement Plans

SEC. 2001. CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.

(a) Increase in Maximum Amount Deductible for Self-Employed Individuals.—

(1) Paragraph (1) of section 404(e) (relating to special limitations for self-employed individuals) is amended—

(A) by striking out "$2,500, or 10 percent" and inserting in lieu thereof "$7,500, or 15 percent", and

(B) by striking out "subject to the provisions of paragraph (2)" and inserting in lieu thereof "subject to paragraphs (2) and (4)".

(2) Paragraph (2)(A) of section 404(e) is amended by striking out "shall not exceed $2,500, or 10 percent" and inserting in lieu thereof "shall (subject to paragraph (4)) not exceed $7,500, or 15 percent".

(3) Section 404(e) is amended by adding at the end thereof the following new paragraph:

"(4) Limitations cannot be lower than $750 or 100 percent of earned income.—The limitations under paragraphs (1) and (2)(A) for any employee shall not be less than the lesser of—

"(A) $750, or

"(B) 100 percent of the earned income derived by such employee from the trades or businesses taken into account for purposes of paragraph (1) or (2)(A) as the case may be.".

(b) Increase in Maximum Amount Deductible for Shareholder-Employees.—Paragraph (1) of section 1379(b) (relating to taxability of shareholder-employees) is amended—

(1) by striking out "10 percent" in subparagraph (A) and inserting in lieu thereof "15 percent", and

(2) by striking out "$2,500" in subparagraph (B) and inserting in lieu thereof "$7,500".

(c) Only First $100,000 of Annual Compensation To Be Taken Into Account.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting after paragraph (16) the following new paragraph:

"(17) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if the annual compensation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation."

(d) *Defined Benefit Plans for Self-Employed Individuals.*—

(1) *Subsection (a) of section 401 is amended by inserting after paragraph (17) the following new paragraph:*

"*(18) In the case of a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if such plan satisfies the requirements of subsection (j).*"

(2) *Section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:*

"*(j) Defined Benefit Plans Providing Benefits for Self-Employed Individuals and Shareholder-Employees.*—

"*(1) In general.—A defined benefit plan satisfies the requirements of this subsection only if the basic benefit accruing under the plan for each plan year of participation by an employee within the meaning of subsection (c)(1) (or a shareholder-employee) is permissible under regulations prescribed by the Secretary or his delegate under this subsection to insure that there will be reasonable comparability (assuming level funding) between the maximum retirement benefits which may be provided with favorable tax treatment under this title for such employees under—*

"*(A) defined contribution plans,*

"*(B) defined benefit plans, and*

"*(C) a combination of defined contribution plans and defined benefit plans.*

"*(2) Guidelines for regulations.—The regulations prescribed under this subsection shall provide that a plan does not satisfy the requirements of this subsection if, under the plan, the basic benefit of any employee within the meaning of subsection (c)(1) (or a shareholder-employee) may exceed the sum of the products for each plan year of participation of—*

"*(A) his annual compensation (not in excess of $50,000) for such year, and*

"*(B) the applicable percentage determined under paragraph (3).*

"*(3) Applicable percentage.*—

"*(A) Table.—For purposes of paragraph (2), the applicable percentage for any individual for any plan year shall be based on the percentage shown on the following table opposite his age when his current period of participation in the plan began.*

"Age when participation began:	Applicable percentage
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

"(B) *Additional requirements.*—*The regulations prescribed under this subsection shall include provisions*—

"(i) *for applicable percentages for ages between any two ages shown on the table,*

"(ii) *for adjusting the applicable percentages in the case of plans providing benefits other than a basic benefit,*

"(iii) *that any increase in the rate of accrual, and any increase in the compensation base which may be taken into account, shall, with respect only to such increase, begin a new period of participation in the plan, and*

"(iv) *when appropriate, in the case of periods beginning after December 31, 1977, for adjustments in the applicable percentages based on changes in prevailing interest and mortality rates occurring after 1973.*

"(4) *Certain contributions and benefits may not be taken into account.*—*A defined benefit plan which provides contributions or benefits for owner-employees does not satisfy the requirements of this subsection unless such plan meets the requirements of subsection (a)(4) without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.*

"(5) *Definitions.*—*For purposes of this subsection*—

"(A) *Basic benefit.*—*The term 'basic benefit' means a benefit in the form of a straight life annuity commencing at the later of*—

"(i) *age 65, or*

"(ii) *the day 5 years after the day the participant's current period of participation began*

under a plan which provides no ancillary benefits and to which employees do not contribute.

"(B) *Shareholder-employee.*—*The term 'shareholder-employee' has the same meaning as when used in section 1379(d).*

"(C) *Compensation.*—*The term 'compensation' means*—

"(i) *in the case of an employee within the meaning of subsection (c)(1), the earned income of such individual, or*

"(ii) *in the case of a shareholder-employee, the compensation received or accrued by the individual from the electing small business corporation.*

"(6) *Special rules.*—*Section 404(e) (relating to special limitations for self-employed individuals) and section 1379(b) (relating to taxability of shareholder-employee beneficiaries) do not apply to a trust to which this subsection applies.*".

(e) *Repeal of Existing Tax Treatment of Excess Contributions.*—

(1) *The last sentence of section 401(d)(5) is amended to read as follows:* "*Subparagraphs (A) and (B) do not apply to contributions described in subsection (e).*"

(2) Paragraph (8) of section 401(d) is repealed.

(3) Subsection (e) of section 401 is amended to read as follows:

"(e) Contributions for Premiums on Annuity, Etc., Contracts.—A contribution by the employer on behalf of an owner-employee is described in this subsection if—

"(1) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

"(2) the amount of such contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

"(3) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible if such section had been in effect) for the first three taxable years (A) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan, and (B) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in paragraph (1) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence does not apply if the amount of such contributions under all such plans for all such years exceeds $7,500. Any contribution which is described in this subsection shall, for purposes of section 4972(b), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year, but only for the purpose of applying section 4972(b) to other contributions made by such owner-employee as an employee."

(4) Clause (ii) of section 401(a)(10)(A) is amended by striking out "subsection (e)(3)(A)" and inserting in lieu thereof "subsection (e)".

(5) Subparagraph (A) of section 72(m)(5)(A) is amended—

(A) by inserting "and" at the end of clause (i),

(B) by striking out the comma at the end of clause (ii) and the word "and" following that comma, and inserting in lieu thereof a period, and

(C) by striking out clause (iii).

(f) Tax on Excess Contributions.—

(1) Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4971 the following new section:

"SEC. 4972. TAX ON EXCESS CONTRIBUTIONS FOR SELF-EMPLOYED INDIVIDUALS.

"(a) Tax Imposed.—In the case of a plan which provides contributions or benefits for employees some or all of whom are employees

within the meaning of section 401(c)(1), there is imposed, for each taxable year of the employer who maintains such plan, a tax in an amount equal to 6 percent of the amount of the excess contributions under the plan (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by the employer who maintains the plan. This section applies only to plans which include a trust described in section 401(a), which are described in section 403(a), or which are described in section 405(a).

"(b) *Excess Contributions.*—

"(1) *In general.*—*For purposes of this section, the term 'excess contributions' means the sum of the amounts (if any) determined under paragraphs (2), (3), and (4), reduced by the sum of the correcting distributions (as defined in paragraph (5)) made in all prior taxable years beginning after December 31, 1975. For purposes of this subsection the amount of any contribution which is allocable (determined under regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.*

"(2) *Contributions by owner-employees.*—*The amount determined under this paragraph, in the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (within the meaning of section 401(c)(3)), is the sum of—*

"(A) *the excess (if any) of—*

"(i) *the amount contributed under the plan by each owner-employee (as an employee) for the taxable year, over*

"(ii) *the amount permitted to be contributed by each owner-employee (as an employee) for such year, and*

"(B) *the amount determined under this paragraph for the preceding taxable year of the employer,*

reduced by the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

"(3) *Defined benefit plans.*—*The amount determined under this paragraph, in the case of a defined benefit plan, is the amount contributed under the plan by the employer during the taxable year or any prior taxable year beginning after December 31, 1975, if—*

"(A) *as of the close of the taxable year, the full funding limitation of the plan (determined under section 412(c)(7)) is zero, and*

"(B) *such amount has not been deductible for the taxable year or any prior taxable year.*

"(4) *Defined contribution plans.*—*The amount determined under this paragraph, in the case of a plan other than a defined benefit plan, is the portion of the amounts contributed under the plan by the employer during the taxable year and each prior taxable year beginning after December 31, 1975, which has not been deductible for the taxable year or any prior taxable year.*

"(5) CORRECTING DISTRIBUTION.—*For purposes of this subsection the term 'correcting distribution' means—*

"(A) *in the case of a contribution made by an owner-employee as an employee, regardless of the type of plan, the amount determined under paragraph (2) distributed to the owner-employee who contributed such amount,*

"(B) *in the case of a defined benefit plan, the amount determined under paragraph (3) which is distributed from the plan to the employer, and*

"(C) *in the case of a defined contribution plan, the amount determined under paragraph (4) which is distributed from the plan to the employer or to the employee to the account of whom the amount described was contributed.*

"(c) AMOUNT PERMITTED TO BE CONTRIBUTED BY OWNER-EMPLOYEE.—*For purposes of subsection (b)(2), the amount permitted to be contributed under a plan by an owner-employee (as an employee) for any taxable year is the smallest of the following:*

"(1) *$2,500,*

"(2) *10 percent of the earned income (as defined in section 401(c)(2)) for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established, or*

"(3) *the amount of the contribution which would be contributed by the owner-employee (as an employee) if such contribution were made at the rate of contributions permitted to be made by employees other than owner-employees.*

In any case in which there are no employees other than owner-employees, the amount determined under the preceding sentence shall be zero.

"(d) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section, see section 275.".

(2) CLERICAL AMENDMENT.—*The table of sections for chapter 43 is amended by inserting after the item relating to section 4971 the following new item:*

"Sec. 4972. Tax on excess contributions for self-employed individuals.".

(g) PREMATURE DISTRIBUTIONS TO OWNER-EMPLOYEES.—

(1) IN GENERAL.—*Subparagraph (B) of section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) is amended to read as follows:*

"(B) *If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year.*"

(2) CONFORMING AMENDMENTS.—

(A) *Subparagraphs (C), (D), and (E) of section 72(m)(5) are repealed.*

(B) *The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3), as each is amended by*

section 2005(c)(4) of this Act, are each amended by inserting after "tax preferences)," the following: "section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),".

(C) The third sentence of section 901(a), as amended by section 2005(c)(5) of this Act, is amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),".

(D) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c), as each is amended by section 2005(c)(7) of this Act, are each amended by striking out "402(e)" and inserting in lieu thereof "72(m)(5)(B), 402(e)".

(E) Section 404(a)(2) is amended by striking out "(16)" and inserting in lieu thereof "(16), (17), (18)".

(F) Clause (ii) of section 404(a)(9)(B) is amended to read as follows:

"(ii) without regard to the second sentence of paragraph (3); and".

(h) Withdrawal of Employee Contributions of Owner-Employees.—

(1) Section 401(d)(4)(B) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended by inserting "in excess of contributions made by an owner-employee as an employee" after "benefits".

(2) Paragraph (1) of section 72(m) (relating to certain amounts received before annuity starting date) is repealed.

(3) Section 72(m)(5)(A)(i) is amended by striking out "(whether or not paid by him)" and inserting in lieu thereof the following: "(other than contributions made by him as an owner-employee)".

(i) Effective Dates.—

(1) The amendments made by subsections (a) and (b) apply to taxable years beginning after December 31, 1973.

(2) The amendments made by subsection (c) apply to—

(A) taxable years beginning after December 31, 1975, and

(B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) as in effect on the day before the date of the enactment of this Act.

(3) The amendments made by subsection (d) apply to taxable years beginning after December 31, 1975.

(4) The amendments made by subsections (e) and (f) apply to contributions made in taxable years beginning after December 31, 1975.

(5) The amendments made by subsection (g) apply to distributions made in taxable years beginning after December 31, 1975.

(6) The amendments made by subsection (h) apply to taxable years ending after the date of enactment of this Act.

SEC. 2002. DEDUCTION FOR RETIREMENT SAVINGS.

(a) Allowance of Deduction.—

(1) In general.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 219 as 220 and by inserting after section 218 the following new section:

"SEC. 219. RETIREMENT SAVINGS.

"(a) Deduction Allowed.—In the case of an individual, there is allowed as a deduction amounts paid in cash during the taxable year by or on behalf of such individual for his benefit—

"(1) to an individual retirement account described in section 408(a),

"(2) for an individual retirement annuity described in section 408(b), or

"(3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance).

For purposes of this title, any amount paid by an employer to such a retirement account or for such a retirement annuity or retirement bond constitutes payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1)) includible in his gross income, whether or not a deduction for such payment is allowable under this section to the employee after the application of subsection (b).

"(b) Limitations and Restrictions.—

"(1) Maximum deduction.—The amount allowable as a deduction under subsection (a) to an individual for any taxable year may not exceed an amount equal to 15 percent of the compensation includible in his gross income for such taxable year, or $1,500, whichever is less.

"(2) Covered by certain other plans.—No deduction is allowed under subsection (a) for an individual for the taxable year if for any part of such year—

"(A) he was an active participant in—

"(i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(ii) an annuity plan described in section 403(a),

"(iii) a qualified bond purchase plan described in section 405(a), or

"(iv) a plan established for its employees by the United States, by a State or political division thereof, or by an agency or instrumentality of any of the foregoing, or

"(B) amounts were contributed by his employer for an annuity contract described in section 403(b) (whether or not his rights in such contract are nonforfeitable).

"(3) Contributions after age 70½.—No deduction is allowed under subsection (a) with respect to any payment described in subsection (a) which is made during the taxable year of an individual who has attained age 70½ before the close of such taxable year.

"(4) RECONTRIBUTED AMOUNTS.—*No deduction is allowed under this section with respect to a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C).*

"(5) AMOUNTS CONTRIBUTED UNDER ENDOWMENT CONTRACT.—*In the case of an endowment contract described in section 408(b), no deduction is allowed under subsection (a) for that portion of the amounts paid under the contract for the taxable year properly allocable, under regulations prescribed by the Secretary or his delegate, to the cost of life insurance.*

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) COMPENSATION.—*For purposes of this section, the term 'compensation' includes earned income as defined in section 401(c)(2).*

"(2) MARRIED INDIVIDUALS.—*The maximum deduction under subsection (b)(1) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.*".

(2) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—*Section 62 (defining adjusted gross income) is amended by inserting after paragraph (9) the following new paragraph:*

"(10) RETIREMENT SAVINGS.—*The deduction allowed by section 219 (relating to deduction of certain retirement savings).*".

(b) INDIVIDUAL RETIREMENT ACCOUNTS.—*Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by adding at the end thereof the following new section:*

"SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) INDIVIDUAL RETIREMENT ACCOUNT.—*For purposes of this section, the term 'individual retirement account' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:*

"(1) *Except in the case of a rollover contribution described in subsection (d)(3), in section 402(a)(5), 403(a)(4), or 409(b)(3)(C), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year in excess of $1,500 on behalf of any individual.*

"(2) *The trustee is a bank (as defined in section 401(d)(1)) or such other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which such other person will administer the trust will be consistent with the requirements of this section.*

"(3) *No part of the trust funds will be invested in life insurance contracts.*

"(4) *The interest of an individual in the balance in his account is nonforfeitable.*

"(5) *The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.*

"(6) *The entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than*

the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such individual or the lives of such individual and his spouse, or

"(B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

"(7) If an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence does not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

"(b) Individual Retirement Annuity.—For purposes of this section, the term 'individual retirement annuity' means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary or his delegate), issued by an insurance company which meets the following requirements:

"(1) The contract is not transferable by the owner.

"(2) The annual premium under the contract will not exceed $1,500 and any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

"(3) The entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such owner or the lives of such owner and his spouse, or

"(B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

"(4) If the owner dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse,

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the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall have no application if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

"(5) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed $1,500.

"(c) Accounts Established by Employers and Certain Associations of Employees.—A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

"(1) The trust satisfies the requirements of paragraphs (1) through (7) of subsection (a).

"(2) There is a separate accounting for the interest of each employee or member.

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

"(d) Tax Treatment of Distributions.—

"(1) In general.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. The basis of any person in such an account or annuity is zero.

"(2) Distributions of annuity contracts.—Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account.

Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero.

"(3) ROLLOVER CONTRIBUTION.—*An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).*

"(A) IN GENERAL.—*Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—*

"(i) *the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) or retirement bond for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution: or*

"(ii) *the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an employee's trust described in section 401(a) which is exempt from tax under section 501 (a) (other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan), or an annuity plan described in section 403(a), other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan, and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution.*

"(B) LIMITATION.—*This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 3-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account, individual retirement annuity, or a retirement bond which was not includible in his gross income because of the application of this paragraph.*

"(4) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—*Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity to the extent that such contribution exceeds the amount allowable as a deduction under section 219 if—*

"(A) *such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,*

"(*B*) *no deduction is allowed under section 219 with respect to such excess contribution, and*

"(*C*) *such distribution is accompanied by the amount of net income attributable to such excess contribution.*

Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received.

"(*5*) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—*The transfer of an individual's interest in an individual retirement account, individual retirement annuity, or retirement bond to his former spouse under a divorce decree or under a written instrument incident to such divorce is not to be considered a taxable transfer made by such individual not withstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as a qualified individual retirement account of such spouse, and not of such individual. Thereafter such account, annuity, or bond for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.*

"(*e*) TAX TREATMENT OF ACCOUNTS AND ANNUITIES.—

"(*1*) EXEMPTION FROM TAX.—*Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).*

"(*2*) LOSS OF EXEMPTION OF ACCOUNT WHERE EMPLOYEE ENGAGES IN PROHIBITED TRANSACTION.—

"(*A*) IN GENERAL.—*If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—*

"(*i*) *the individual for whose benefit any account was established is treated as the creator of such account, and*

"(*ii*) *the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.*

"(*B*) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—*In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).*

"(*3*) EFFECT OF BORROWING ON ANNUITY CONTRACT.—*If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income*

for such year an amount equal to the fair market value of such contract as of such first day.

"(4) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—*If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.*

"(5) PURCHASE OF ENDOWMENT CONTRACT BY INDIVIDUAL RETIREMENT ACCOUNT.—*If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—*

"(*A*) *to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d) (3), and*

"(*B*) *to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).*

"(6) COMMINGLING INDIVIDUAL RETIREMENT ACCOUNT AMOUNTS IN CERTAIN COMMON TRUST FUNDS AND COMMON INVESTMENT FUNDS.—*Any common trust fund or common investment fund of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).*

"(*f*) *ADDITIONAL TAX ON CERTAIN AMOUNTS INCLUDED IN GROSS INCOME BEFORE AGE 59½—*

"(*1*) *EARLY DISTRIBUTIONS FROM AN INDIVIDUAL RETIREMENT ACCOUNT, ETC.—If a distribution from an individual retirement account or under an individual retirement annuity to the individual for whose benefit such account or annuity was established is made before such individual attains age 59½, his tax under this chapter for the taxable year in which such distribution is received shall be increased by an amount equal to 10 percent of the amount of the distribution which is includible in his gross income for such taxable year.*

"(*2*) *DISQUALIFICATION CASES.—If an amount is includible in gross income for a taxable year under subsection (e) and the taxpayer has not attained age 59½ before the beginning of such taxable year, his tax under this chapter for such taxable year shall be increased by an amount equal to 10 percent of such amount so required to be included in his gross income.*

"(*3*) *DISABILITY CASES.—Paragraphs (1) and (2) do not apply if the amount paid or distributed, or the disqualification of the account or annuity under subsection (e), is attributable to the taxpayer becoming disabled within the meaning of section 72(m)(7).*

"(*g*) *COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.*

"(h) Custodial Accounts.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 401(d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(i) Reports.—The trustee of an individual retirement account and the issuer of an endowment contract described in section 408(b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary or his delegate and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions, distributions, and such other matters as the Secretary or his delegate may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.

"(j) Cross References.—

"(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4973.

"(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974."

(c) Retirement Bonds.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by inserting after section 408 the following new section:

"SEC. 409. RETIREMENT BONDS

"(a) Retirement Bond.—For purposes of this section and section 219(a), the term 'retirement bond' means a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary or his delegate under such Act—

"(1) provides for payment of interest, or investment yield, only on redemption;

"(2) provides that no interest, or investment yield, is payable if the bond is redeemed within 12 months after the date of its issuance;

"(3) provides that it ceases to bear interest, or provide investment yield on the earlier of—

"(A) the date on which the individual in whose name it is purchased (hereinafter in this section referred to as the 'registered owner') attains age 70½; or

"(B) 5 years after the date on which the registered owner dies, but not later than the date on which he would have attained the age 70½ had he lived;

"(4) provides that, except in the case of a rollover contribution described in subsection (b)(3)(C) or in section 402(a)(5), 403(a)(4), or 408(d)(3) the registered owner may not contribute

for the purchase of such bonds in excess of $1,500 in any taxable year; and

"*(5) is not transferable.*

"*(b) Income Tax Treatment of Bonds.—*

"*(1) In general.—Except as otherwise provided in this subsection, on the redemption of a retirement bond the entire proceeds shall be included in the gross income of the taxpayer entitled to the proceeds on redemption. If the registered owner has not tendered it for redemption before the close of the taxable year in which he attains age 70½, such individual shall include in his gross income for such taxable year the amount of proceeds he would have received if the bond had been redeemed at age 70½. The provisions of section 72 (relating to annuities) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply to a retirement bond.*

"*(2) Basis.—The basis of a retirement bond is zero.*

"*(3) Exceptions.—*

"*(A) Redemption within 12 months.—If a retirement bond is redeemed within 12 months after the date of its issuance, the proceeds are excluded from gross income if no deduction is allowed under section 219 on account of the purchase of such bond.*

"*(B) Redemption after age 70½.—If a retirement bond is redeemed after the close of the taxable year in which the registered owner attains age 70½, the proceeds from the redemption of the bond are excluded from the gross income of the registered owner to the extent that such proceeds were includible in his gross income for such taxable year.*

"*(C) Rollover into an individual retirement account or annuity or a qualified plan.—If a retirement bond is redeemed at any time before the close of the taxable year in which the registered owner attains age 70½, and the registered owner transfers the entire amount of the proceeds from the redemption of the bond to an individual retirement account described in section 408(a) or to an individual retirement annuity described in section 408(b) (other than an endowment contract) which is maintained for the benefit of the registered owner of the bond, or to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) for the benefit of the registered owner, on or before the 60th day after the day on which he received the proceeds of such redemption, then the proceeds shall be excluded from gross income and the transfer shall be treated as a rollover contribution described in section 403(d)(3). This subparagraph does not apply in the case of a transfer to such an employees' trust or such an annuity plan unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an employees' trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan).*

"(c) ADDITIONAL TAX ON CERTAIN REDEMPTIONS BEFORE AGE 59½.—

"(1) EARLY REDEMPTION OF BOND.—*If a retirement bond is redeemed by the registered owner before he attains age 59½, his tax under this chapter for the taxable year in which the bond is redeemed shall be increased by an amount equal to 10 percent of the amount of the proceeds of the redemption includible in his gross income for the taxable year.*

"(2) DISABILITY CASES.—*Paragraph (1) does not apply for any taxable year during which the retirement bond is redeemed if, for that taxable year, the registered owner is disabled within the meaning of section 72(m)(7).*

"(3) REDEMPTION WITHIN ONE YEAR.—*Paragraph (1) does not apply if the registered owner tenders the bond for redemption within 12 months after the date of its issuance.*".

(d) EXCISE TAX ON EXCESS CONTRIBUTIONS.—*Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4972 the following new section:*

"SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS, CERTAIN SECTION 403(b) CONTRACTS, CERTAIN INDIVIDUAL RETIREMENT ANNUITIES, AND CERTAIN RETIREMENT BONDS.

"(a) TAX IMPOSED.—*In the case of—*

"(1) *an individual retirement account (within the meaning of section 408(a)),*

"(2) *an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock), or*

"(3) *a retirement bond (within the meaning of section 409),*

established for the benefit of any individual, there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts, annuities, or bonds (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account, annuity, or bond (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

"(b) EXCESS CONTRIBUTIONS.—*For purposes of this section, in the case of individual retirement accounts, individual retirement annuities, or bonds, the term 'excess contributions' means the sum of—*

"(1) *the excess (if any) of—*

"(A) *the amount contributed for the taxable year to the accounts or for the annuities or bonds (other than a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3)), or 409(b)(3)(C), over*

"(B) *the amount allowable as a deduction under section 219 for such contributions, and*

"(2) *the amount determined under this subsection for the preceding taxable year, reduced by the excess (if any) of the maxi-*

mum amount allowable as a deduction under section 219 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable year and reduced by the sum of the distributions out of the account (for all prior taxable years) which were included in the gross income of the payee under section 408(d)(1). For purposes of this paragraph, any contribution which is distributed out of the individual retirement account, individual retirement annuity, or bond in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

"*(c) Section 403(b) Contracts.—For purposes of this section, in the case of a custodial account referred to in subsection (a)(3), the term 'excess contributions' means the sum of—*

"*(1) the excess (if any) of the amount contributed for the taxable year to such account, over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and*

"*(2) the amount determined under this subsection for the preceding taxable year, reduced by—*

"*(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and*

"*(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e).*

(e) Excise Tax on Excessive Accumulations.—Chapter 43 is amended by inserting after section 4973 the following new section:

"SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.

"*(a) Imposition of Tax.—If, in the case of an individual retirement account or individual retirement annuity, the amount distributed during the taxable year of the payee is less than the minimum amount required to be distributed under section 408(a) (6) or (7), or 408(b) (3) or (4) during such year, there is imposed a tax equal to 50 percent of the amount by which the minimum amount required to be distributed during such year exceeds the amount actually distributed during the year. The tax imposed by this section shall be paid by such payee.*

"*(b) Regulations.—For purposes of this section, the minimum amount required to be distributed during a taxable year under section 408(a) (6) or (7) or 408(b) (3) or (4) shall be determined under regulations prescribed by the Secretary or his delegate.*".

(f) Penalty for Failure To Provide Reports on Individual Retirement Accounts.—Subchapter B of chapter 68 (relating to

assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6693. FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS OR

"(a) The person required by section 408(i) to file a report regarding an individual retirement account or individual retirement annuity at the time and in the manner required by section 408(i) shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

"(b) Deficiency Procedures Not To Apply.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) does not apply to the assessment or collection of any penalty imposed by subsection (a).".

(g) Conforming Amendments.—

(1) Section 37(c)(1) (defining retirement income) is amended—

(A) by striking out "and" at the end of subparagraph (D),

(B) by adding at the end of subparagraph (E) the following: "retirement bonds described in section 409, and", and

(C) by adding at the end thereof the following new paragraph:

"(F) an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b), or".

(2) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3), as each is amended by sections 2001(g)(2)(B) and 2005(c)(4) of this Act, are each amended by inserting after "owner-employees)," the following: "section 408(e) (relating to additional tax on income from certain retirement accounts),".

(3) The third sentence of section 901(a), as amended by section 2005(c)(5) of this Act, is amended by inserting "against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts)," before "against the tax imposed by section 531".

(4) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by striking out "531" and inserting in lieu thereof "408(f), 531,".

(5) Section 402(a) (relating to taxability of beneficiary of exempt trust), as amended by section 2005(c)(2) of this Act, is amended by inserting after paragraph (5) of the following new paragraph:

"(5) Rollover amounts.—In the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if—

"(A) the balance to the credit of an employee is paid to him on one or more distributions which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subsection (e)(4)(B)),

"(*B*) (*i*) *the employee transfers all the property he receives in such distribution to an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property, exceeds the amount referred to in subsection (e)(4)(D)(i), or*

"(*ii*) *the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in section 403(a) on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e)(4)(D)(i), and*

"(*C*) *the amount so transferred consists of the property (other than money) distributed, to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),*

then such distributions are not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution as described in section 408(d)(3). Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan of any part of the lump sum distribution described in subparagraph (A) is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan."

(*6*) *Section 403(a) (relating to taxation of employee annuities) is amended by adding after paragraph (3) the following new paragraph:*

"(4) ROLLOVER AMOUNTS.—*In the case of an employee annuity described in 403(a), if—*

"(*A*) *the balance to the credit of an employee is paid to him in one or more distributions which constitute a lump sum distribution within the meaning of section 402(e)(4)(A) (determined without reference to section 402(e)(4)(B),*

"(*B*) (*i*) *the employee transfers all the property he receives in such distribution to an individual account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), or*

"(*ii*) *the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in subsection (a) on or before the 60th day after the day on which he received such prop-*

erty to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), and

"(C) the amount so transferred consists of the property distributed to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distribution is not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution described in section 408(d)(3).

Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of the lump sum distribution described in subparagraph (A) is attributable to an annuity plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.".

(7) Section 3401(a)(12) (relating to exemption from collection of income tax at source on certain wages) is amended by adding at the end thereof the following new subparagraph:

"(D) for a payment described in section 219(a) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for payment; or".

(8) Section 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) OTHER PROGRAMS.—To the extent provided by regulations prescribed by the Secretary or his delegate, the provisions of this section apply with respect to any payment described in section 219(a) and to transactions of any trust described in section 408(a) or under an individual retirement annuity described in section 408(b).".

(9) Section 805(d)(1) (relating to definition of pension plan reserves) is amended by striking out "or" at the end of subparagraph (C), by striking out "foregoing," at the end of subparagraph (D) and inserting in lieu thereof "foregoing; or", and by adding at the end thereof the following new subparagraph:

"(E) purchased under contracts entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b)."

(10) Section 72 (relating to annuities) is amended—

(A) by inserting after "501(a)" in subsection (m)(4)(A) ", an individual retirement amount described in section 408(a), an individual retirement annuity described in section 408(b)".

(B) by striking out at the end of subsection (m)(6) "401(c)(3)" and inserting in lieu thereof "401(c)(3) and includes an individual for whose benefit an individual retire-

ment account or annuity described in section 408 (a) or (b) is maintained".

(11) Section 801(g)(7) (relating to basis of assets held for qualified pension plan contracts) is amended by striking out "or (D)" and inserting in lieu thereof "(D), or (E)".

(h) Clerical Amendments.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 219 and inserting in lieu thereof the following:

"Sec. 219. Retirement savings.
"Sec. 220. Cross references.".

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by adding at the end thereof the following:

"Sec. 408. Individual retirement accounts.
"Sec. 409. Retirement bonds.".

(3) The table of sections for chapter 43 is amended by inserting after the item relating to section 4972 the following new items:

"Sec. 4973. Tax on excess contributions to individual retirement accounts, certain 403(b) contracts, certain individual retirement annuities, and certain retirement bonds.
"Sec. 4974. Tax on certain accumulations in individual retirement accounts.
"Sec. 4975. Tax on prohibited transactions.".

(4) The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6693. Failure to provide reports on individual retirement accounts or annuities.".

(i) Effective Dates.—

(1) The amendments made by subsections (a), (b), and (c) apply to taxable years beginning after December 31, 1974.

(2) The amendments made by subsections (d) through (h) except subsection (g)(5) and (6) shall take effect on January 1, 1975.

(3) The amendments made by subsection (g)(5) and (6) shall apply on and after the date of enactment of this Act with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code.

SEC. 2003. PROHIBITED TRANSACTIONS.

(a) Excise Tax on Prohibited Transactions.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding after section 4974 the following new section:

"SEC. 4975. TAX ON PROHIBITED TRANSACTIONS.

"(a) Initial Taxes on Disqualified Person.—There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 5 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified

person who participates in the prohibited transaction (other than a fiduciary acting only as such).

"(b) Additional Taxes on Disqualified Person.—In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

"(c) Prohibited Transaction.—

"(1) General rule.—For purposes of this section, the term 'prohibited transaction' means any direct or indirect—

"(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

"(B) lending of money or other extension of credit between a plan and a disqualified person;

"(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

"(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

"(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or

"(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

"(2) Special exemption.—The Secretary or his delegate shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, or class of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary or his delegate may not grant an exemption under this paragraph unless he finds that such exemption is—

"(A) administratively feasible.

"(B) in the interests of the plan and of its participants and beneficiaries, and

"(C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph, the Secretary or his delegate shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary or his delegate affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except

that in lieu of such hearing the Secretary or his delegate may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

"(3) SPECIAL RULE FOR INDIVIDUAL RETIREMENT ACCOUNTS.—*An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt for the tax imposed by this section with respect to any transaction concerning such account (which would otherwise by taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408 (e)(4) applies to such account.*

"(d) EXEMPTIONS.—*The prohibitions provided in subsection (c) shall not apply to—*

"(1) *any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—*

"(A) *is available to all such participants or beneficiaries on a reasonably equivalent basis,*

"(B) *is not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees,*

"(C) *is made in accordance with specific provisions regarding such loans set forth in the plan,*

"(D) *bears a reasonable rate of interest, and*

"(E) *is adequately secured;*

"(2) *any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;*

"(3) *any loan to an employee stock ownership plan (as defined in subsection (e)(7)), if—*

"(A) *such loan is primarily for the benefit of participants and beneficiaries of the plan, and*

"(B) *such loan is at a reasonable rate of interest, and any collateral is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e)(8));*

"(4) *the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—*

"(A) *the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or*

"(B) *such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;*

"(5) *any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do busi-*

ness in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

"(*A*) *the employer maintaining the plan, or*

"(*B*) *a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);*

"(*6*) *the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—*

"(*A*) *such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and*

"(*B*) *the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary or his delegate after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—*

"(*i*) *in an excessive or unreasonable manner, and*

"(*ii*) *in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;*

"(*7*) *the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary or his delegate, but only if the plan receives no less than adequate consideration persuant to such conversion;*

"(*8*) *any transaction between a plan and*

"(*A*) *a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—*

"(*A*) *the transaction is a sale or purchase of an interest in the fund,*

"(*B*) *the bank, trust company, or insurance company receives not more than reasonable compensation, and*

"(*C*) *such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;*

"(*9*) *receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;*

"(*10*) *receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;*

"(*11*) *service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;*

"(*12*) *the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets); or*

"(*13*) *any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction).*

The exemptions provided by this subsection (other than paragraphs (9) and (12)) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder—employee (as defined in section 1379), a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409), and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee.

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"(e) *Definitions.*—

"(1) *Plan.*—*For purposes of this section, the term 'plan' means a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a) or 405(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) or a retirement bond described in section 409 (or a trust, plan, account, annuity, or bond which, at any time, has been determined by the Secretary or his delegate to be such a trust, plan, account, or bond).*

"(2) *Disqualified person.*—*For purposes of this section, the term 'disqualified person' means a person who is*—

"(A) *a fiduciary;*

"(B) *a person providing services to the plan;*

"(C) *an employer any of whose employees are covered by the plan;*

"(D) *an employee organization any of whose members are covered by the plan;*

"(E) *an owner, direct or indirect, of 50 percent or more of*—

"(i) *the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,*

"(ii) *the capital interest or the profits interest of a partnership, or*

"(iii) *the beneficial interest of a trust or unincorporated enterprise,*

which is an employer or an employee organization described in subparagraph (C) or (D);

"(F) *a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);*

"(G) *a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of*—

"(i) *the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,*

"(ii) *the capital interest or profits interest of such partnership, or*

"(iii) *the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);*

"(H) *an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or*

"(I) *a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).*

The Secretary, after consultation and coordination with the Secretary of Labor, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

"(3) FIDUCIARY.—For purposes of this section, the term 'fiduciary' means any person who—

"(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

"(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

"(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405 (c)(1)(B) of the Employee Retirement Income Security Act of 1974.

"(4) STOCKHOLDINGS.—For purposes of paragraphs (2)(E)(i), and (G) (i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

"(5) PARTNERSHIPS; TRUSTS.—For purposes of paragraphs (2)(E)(ii) and (iii), (G)(ii) and (iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

"(6) MEMBER OF FAMILY.—For purposes of paragraph (2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

"(7) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means a defined contribution plan—

"(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401, and which are designed to invest primarily in qualifying employer securities; and

"(B) which is otherwise defined in regulations prescribed by the Secretary or his delegate.

(8) QUALIFYING EMPLOYER SECURITY.—The term 'qualifying employer security' means an employer security which is—

"(A) stock or otherwise an equity security, or

"(B) a bond, debenture, note, or certificate or other evidence of indebtedness which is described in paragraphs (1), (2), and (3) of section 503(e).

If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Com-

pany Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

"*(f) Other Definitions and Special Rules.—For purposes of this section—*

"*(1) Joint and several liability.—If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.*

"*(2) Taxable period.—The term 'taxable period' means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earlier of—*

"*(A) the date of mailing of a notice of deficiency pursuant to section 6212, with respect to the tax imposed by subsection (a), or*

"*(B) the date on which correction of the prohibited transaction is completed.*

"*(3) Sale or exchange; encumbered property.—A transfer of real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.*

"*(4) Amount involved.—The term 'amount involved' means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2), (11), and (12) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—*

"*(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and*

"*(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the correction period.*

"*(5) Correction.—The terms 'correction' and 'correct' mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.*

"*(6) Correction period.—The term 'correction period' means, with respect to a prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with*

respect to the tax imposed by subsection (b) under section 6212, extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) any other period which the Secretary or his delegate determines is reasonable and necessary to bring about the correction of the prohibited transaction.

"(g) Application of Section.—This section shall not apply—

"(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b)(2)(B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy;

"(2) to a governmental plan (within the meaning of section 414(d)); or

"(3) to a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

"(h) Notification of Secretary of Labor.—Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary or his delegate shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

"(i) Cross Reference.—

"For provisions concerning coordination procedures between Secretary of Labor and Secretary of Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3002 of Employment Retirement Income Security Act of 1974.".

(b) Amendment of Section 503.—Section 503 (relating to requirements for exemption) is amended—

(1) by striking out "or (18)" in subsection (a)(1)(A),

(2) by amending subsection (a)(1)(B) by inserting "which is referred to in section 4975(g)(2) or (3)" after "described in section 401(a)",

(3) by striking out "or section 401 " in subsection (a)(2) and inserting in lieu thereof "or paragraph (1)(B)",

(4) by striking out "or section 401" in subsection (c) and inserting in lieu thereof "or subsection (a)(1)(B)", and

(5) by striking out subsection (g).

(c) Effective Date and Savings Provisions.—

(1)(A) The amendments made by this section shall take effect on January 1, 1975.

(B) If, before the amendments made by this section take effect, an organization described in section 401(a) of the Internal Revenue Code of 1954 is denied exemption under section 501(a) of

such Code by reason of section 503 of such Code, the denial of such exemption shall not apply if the disqualified person elects (in such manner and at such time as the Secretary or his delegate shall by regulations prescribe) to pay, with respect to the prohibited transaction (within the meaning of section 503 (b) or (g)) which resulted in such denial of exemption, a tax in the amount and in the manner provided with respect to the tax imposed under section 4975 of such Code. An election made under this subparagraph, once made, shall be irrevocable. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(2) Section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) shall not apply to—

(A) a loan of money or other extension of credit between a plan and a disqualified person under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of such Code or the corresponding provisions of prior law);

(B) a lease or joint use of property involving the plan and a disqualified person pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law;

(C) the sale, exchange, or other disposition of property described in subparagraph (B) between a plan and a disqualified person before June 30, 1984, if—

(i) in the case of a sale, exchange, or other disposition of the property by the plan to the disqualified person, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(ii) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(D) Until June 30, 1977, the provision of services to which subparagraphs (A), (B), and (C) do not apply between a plan and a disqualified person (i) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or (ii) if the disqualified person ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as

an arm's-length transaction with an unrelated party would be and if the provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law; or

(E) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a disqualified person, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a)(2)(A) (relating to the prohibition against holding excess employer securities and employer real property) of the Employee Retirement Income Security Act of 1974, and if the plan receives not less than adequate consideration.

For the purposes of this paragraph, the term "disqualified person" has the meaning provided by section 4975(e)(2) of the Internal Revenue Code of 1954.

SEC. 2004. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS.

(a) PLAN REQUIREMENTS.—

(1) Section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (15) the following new paragraph:

"(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415."

(2) Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 414 the following new section:

"SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTION UNDER QUALIFIED PLANS.

"(a) GENERAL RULE.—

"(1) TRUSTS.—A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if—

"(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b),

"(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c), or

"(C) in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (g).

"(2) SECTION APPLIES TO CERTAIN ANNUITIES AND ACCOUNTS.—In the case of—

"(A) an employee annuity plan described in section 403(a),

"(B) an annuity contract described in section 403(b),

"(C) an individual retirement account described in section 408(a),

"(*D*) *an individual retirement annuity described in section 408(b),*

"(*E*) *a plan described in section 405(a), or*

"(*F*) *a retirement bond described in section 409,*

such contract, annuity plan, account, annuity, plan, or bond shall not be considered to be described in section 403(a), 403(b), 405, 408(a), 408(b), or 409, as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403 (b)(2).

"(*b*) LIMITATION FOR DEFINED BENEFIT PLANS.—

"(*1*) IN GENERAL.—*Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—*

"(*A*) *$75,000, or*

"(*B*) *100 percent of the participant's average compensation for his high 3 years.*

"(*2*) ANNUAL BENEFIT.—

"(*A*) IN GENERAL.—*For purposes of paragraph (1), the term 'annual benefit' means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402 (a)(5), 403(a)(4), 408(d)(3), and 409(b)(3)(C)) are made.*

"(*B*) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFIT.—*If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3) and 409(b)(3)(C)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 401(a)(11)(H)(iii)) shall not be taken into account.*

"(*C*) ADJUSTMENT TO $75,000 LIMIT WHERE BENEFIT BEGINS BEFORE AGE 55.—*If the retirement income benefit under the plan begins before age 55, the determination as to whether the $75,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regula-*

tions prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to such a benefit beginning at age 55.

"*(3) Average compensation for high 3 years.—For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant both was an active participant in the plan and had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for 'compensation from the employer' the following: 'the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'.*

"*(4) Total annual benefits not in excess of $10,000.—Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—*

"*(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed $10,000 for the plan year, or for any prior plan year, and*

"*(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.*

"*(5) Reduction for service less than 10 years.—In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10.*

"*(6) Computation of benefits and contributions.—The computation of—*

"*(A) benefits under a defined contribution plan, for purposes of section 401(a)(4),*

"*(B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4), and*

"*(C) contributions and benefits provided for a participant in a plan described in section 414(k), for purposes of this section*

shall not be made on a basis inconsistent with regulations prescribed by the Secretary or his delegate.

"*(c) Limitation for Defined Contribution Plans.—*

"*(1) In general.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—*

"*(A) $25,000, or*

"*(B) 25 percent of the participant's compensation.*

"(2) ANNUAL ADDITION.—*For purposes of paragraph (1), the term 'annual addition' means the sum for any year of—*

"(A) *employer contributions,*

"(B) *the lesser of—*

"(i) *the amount of the employee contributions in excess of 6 percent of his compensation, or*

"(ii) *one-half of the employee contributions, and*

"(C) *forfeitures.*

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3), and 409(b)(3)(C)).

"(3) PARTICIPANT'S COMPENSATION.—*For purposes of paragraph (1), the term 'participant's compensation' means the compensation of the participant from the employer for the year. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for 'compensation of the participant from the employer' the following: 'the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'.*

"(4) SPECIAL ELECTION FOR SECTION 403(b) CONTRACTS PURCHASED BY EDUCATIONAL INSTITUTIONS, HOSPITALS, AND HOME HEALTH SERVICE AGENCIES.—

"(A) *In the case of amounts contributed for an annuity contract described in section 403(b) for the year in which occurs a participant's separation from the service with an educational institution, a hospital, or a home health service agency, at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the amount of the exclusion allowance which would be determined under section 403(b)(2) (without regard to this section) for the participant's taxable year in which such separation occurs if the participant's years of service were computed only by taking into account his service for the employer during the period of years (not exceeding ten) ending on the date of such separation.*

"(B) *In the case of amounts contributed for an annuity contract described in section 403(b) for any year in the case of a participant who is an employee of an educational institution, a hospital, or a home health service agency, at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the least of—*

"(i) *25 percent of the participant's includible compensation (as defined in section 403(b)(3)) plus $4,000,*

"(ii) *the amount of the exclusion allowance determined for the year under section 403(b)(2), or*

"(iii) *$15,000.*

"(C) *In the case of amounts contributed for an annuity contract described in section 403(b) for any year for a participant who is an employee of an educational institution, a hospital, or a home health service agency, at the election of*

the participant the provisions of section 403(b)(2)(A) shall not apply.

"*(D)(i) The provisions of this paragraph apply only if the participant elects its application at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under subparagraph (A) by any participant. A participant who elects to have the provisions of subparagraph (A), (B), or (C) of this paragraph apply to him may not elect to have any other subparagraph of this paragraph apply to him. Any election made under this paragraph is irrevocable.*

"*(ii) For purposes of this paragraph the term 'educational institution' means an educational institution as defined in section 151(e)(4).*

"*(iii) For purposes of this paragraph the term 'home health service agency' means an organization described in subsection 501(c)(3) which is exempt from tax under section 501(a) and which has been determined by the Secretary of Health, Education, and Welfare to be a home health agency (as defined in section 1861(o) of the Social Security Act).*

"*(d) Cost-of-Living Adjustments.—*

"*(1) In general.—The Secretary or his delegate shall adjust annually—*

"*(A) the $75,000 amount in subsection (b)(1)(A),*

"*(B) the $25,000 amount in sub ection (c)(1)(A), and*

"*(C) in the case of a participant who is separated from service, the amount taken into account under subsection (b)(1)(B),*

for increases in the cost of living in accordance with regulations prescribed by the Secretary or his delegate. Such regulations shall provide for adjustment procedures which are similar to the procedures used to adjust primary insurance amounts under section 215(i)(2)(A) of the Social Security Act.

"*(2) Base periods.—The base period taken into account—*

"*(A) for purposes of subparagraphs (A) and (B) of paragraph (1) is the calendar quarter beginning October 1, 1974, and*

"*(B) for purposes of subparagraph (C) of paragraph (1) is the last calendar quarter of the calendar year before the calendar year in which the participant is separated from service.*

"*(e) Limitation in Case of Defined Benefit Plan and Defined Contribution Plan for Same Employee.—*

"*(1) In general.—In any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any year may not exceed 1.4.*

"*(2) Defined benefit plan fraction.—For purposes of this subsection, the defined benefit plan fraction for any year is a fraction—*

"*(A) the numerator of which is the projected annual benefit of the participant under the plan (determined as of the close of the year), and*

"(*B*) *the denominator of which is the projected annual benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsection (b).*

"(*3*) *Defined contribution plan fraction.—For purposes of this subsection, the defined contribution plan fraction for any year is a fraction—*

"(*A*) *the numerator of which is the sum of the annual additions to the participant's account as of the close of the year, and*

"(*B*) *the denominator of which is the sum of the maximum amount of annual additions to such account which could have been made under subsection (c) for such year and for each prior year of service with the employer.*

"(*4*) *Special transition rules for defined contribution fraction.—In applying paragraph (3) with respect to years beginning before January 1, 1976—*

"(*A*) *the aggregate amount taken into account under paragraph (3)(A) may not exceed the aggregate amount taken into account under paragraph (3)(B), and*

"(*B*) *the amount taken into account under subsection (c)(2)(B)(i) for any year concerned is an amount equal to—*

"(*i*) *the excess of the aggregate amount of employee contributions for all years beginning before January 1, 1976, during which the employee was an active participant of the plan, over 10 percent of the employee's aggregate compensation for all such years, multiplied by*

"(*ii*) *a fraction the numerator of which is 1 and the denominator of which is the number of years beginning before January 1, 1976, during which the employee was an active participant in the plan.*

Employee contributions made on or after October 2, 1973, shall be taken into account under subparagraph (B) of the preceding sentence only to the extent that the amount of such contributions does not exceed the maximum amount of contributions permissible under the plan as in effect on October 2, 1973.

"(*5*) *Special rules for sections 403(b) and 408.—For purposes of this subsection, any annuity contract described in section 403(b) (except in the case of a participant who has elected under subsection (c)(4)(D) to have the provisions of subsection (c)(4)(C) apply), any individual retirement account described in section 408(a), any individual retirement annuity described in section 408(b), and any retirement bond described in section 409, for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). In the case of any annuity contract described in section 403(b), the amount of the contribution disqualified by reason of subsection (g) shall reduce the exclusion allowance as provided in section 403(b)(2).*

"(f) *Combining of Plans.*—

"(1) *In general.*—*For purposes of applying the limitations of subsections (b), (c), and (e)*—

"(A) *all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and*

"(B) *all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.*

"(2) *Annual compensation taken into account for defined benefit plans.*—*If the employer has more than one defined benefit plan*—

"(A) *subsection (b)(1)(B) shall be applied separately with respect to each such plan, but*

"(B) *in applying subsection (b)(1)(B) to the aggregate of such defined benefit plans for purposes of this subsection, the high 3 years of compensation taken into account shall be the period of consecutive calendar years (not more than 3) during which the individual had the greatest aggregate compensation from the employer.*

"(g) *Aggregation of Plans.*—*The Secretary or his delegate, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414 (b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary or his delegate, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsections (e) and (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.*

"(h) *50 Percent Control.*—*For purposes of applying subsections (b) and (c) of section 414 to this section, the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563(a)(1).*

"(i) *Records Not Available for Past Periods.*—*Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary or his delegate may by regulations prescribe alternative methods for determining the amounts to be taken into account for such period.*

"(j) *Regulations; Definition of Year.*—*The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section, including, but not limited to, regulations defining the term 'year' for purposes of any provision of this section.*

"(*k*) *Special Rules.*—

"(*1*) *Defined benefit plan and defined contribution plan.*—*For purposes of this title, the term 'defined contribution plan' or 'defined benefit plan' means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is*—

"(*A*) *a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),*

"(*B*) *an annuity plan described in section 403(a),*

"(*C*) *a qualified bond purchase plan described in section 405(a),*

"(*D*) *an annuity contract described in section 403(b),*

"(*E*) *an individual retirement account described in section 408(a),*

"(*F*) *an individual retirement annuity described in section 408(b), or*

"(*G*) *an individual retirement bond described in section 409.*".

(*3*) *Special rule for certain plans in effect on date of enactment.*—*In any case in which, on the date of enactment of this Act, an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, and the sum of the defined benefit plan fraction and the defined contribution plan fraction for the year during which such date occurs exceeds 1.4, the sum of such fractions may continue to exceed 1.4 if*—

(*A*) *the defined plan fraction is not increased, by amendment of the plan or otherwise, after the date of enactment of this Act, and*

(*B*) *no contributions are made under the defined contribution plan after such date.*

A trust which is part of a pension, profit-sharing, or stock bonus plan described in the preceding sentence shall not be treated as not constituting a qualified trust under section 401(a) of the Internal Revenue Code of 1954 on account of the provisions of section 415(e) of such Code, as long as it is described in the preceding sentence of this subsection.

(*b*) *Limit on Employer Deductions.*—*The second sentence of section 404(a)(3)(A) (relating to limits on deductible contributions) is amended by striking out "beneficiaries under the plan." and inserting in lieu thereof "beneficiaries under the plan, but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan.*".

(*c*) *Certain Annuity and Bond Purchase Plans.*—

(*1*) *Section 404(a)(2) (relating to the general rule for deduction for employee annuities) is amended by striking out "(15)" and inserting in lieu thereof "(15), (16), and (19)" and by strik-*

ing out "(a) (9) and (10)" and inserting in lieu thereof "(a) (9), (10), (17), and (18)".

(2) Section 405(a)(1) (relating to requirements for qualified bond purchase plans) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (16), and (19)".

(3) Section 805(d)(1)(C) (relating to pension plan reserves) is amended by striking out "and (15)" and inserting in lieu thereof "(15), (16), and (19)".

(4) Section 403(b)(2) (relating to exclusion allowance) is amended to read as follows:

"(2) EXCLUSION ALLOWANCE.—

"(A) IN GENERAL.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

"(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

"(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

"(B) ELECTION TO HAVE ALLOWANCE DETERMINED UNDER SECTION 415 RULES.—In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, and home health service agencies) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415) by his employer under a plan described in section 403(a) if the annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.".

(d) EFFECTIVE DATE.—

(1) GENERAL RULE.—The amendments made by this section shall apply to years beginning after December 31, 1975. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.

(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan before October 3, 1973, if—

(A) the annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1954) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on the earlier of (i) October 2, 1973, or (ii) the date on which he separated from the service of the employer,

(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date, and

(C) in the case of a participant who separated from the service of the employer prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from the service,

then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1954. For purposes of subparagraph (B) of section 415 (e)(2) of such Code, the maximum benefit allowable under subsection (b) of such section 415 shall be determined without regard to this paragraph.

SEC. 2005. TAXATION OF CERTAIN LUMP SUM DISTRIBUTION.

(a) Treatment of Total Distributions.—Section 402(e) (relating to certain plan terminations) is amended to read as follows:

"(e) Tax on Lump Sum Distributions.—

"(1) Imposition of separate tax on lump sum distributions.—

"(A) Separate tax.—There is hereby imposed a tax (in the amount determined under subparagraph (B)) on the ordinary income portion of a lump sum distribution.

"(B) Amount of tax.—The amount of tax imposed by subparagraph (A) for any taxable year shall be an amount equal to the amount of the initial separate tax for such taxable year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the taxable year and the denominator of which is the total taxable amount of such distribution for such year.

"(C) Initial separate tax.—The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to one-tenth of the excess of—

"(i) the total taxable amount of the lump sum distribution for the taxable year, over

"(ii) the minimum distribution allowance.

"(D) Minimum distribution allowance.—For purposes of this paragraph, the minimum distribution allowance for the taxable year is an amount equal to—

"(i) the lesser of $10,000 or one-half of the total taxable amount of the lump sum distribution for the taxable year, reduced (but not below zero) by

"(ii) 20 percent of the amount (if any) by which such total taxable amount exceeds $20,000.

"(E) Liability for tax.—The recipient shall be liable for the tax imposed by this paragraph.

"(2) Multiple distributions and distributions of annuity contracts.—In the case of any recipient of a lump sum distribution for the taxable year with respect to whom during the 6-taxable-year period ending on the last day of the taxable year there has been one or more other lump sum distributions after December 31, 1973, or if the distribution (or any part thereof) is an annuity contract, in computing the tax imposed by paragraph (1)

(A), the total taxable amounts of all such distributions during such 6-taxable-year period shall be aggregated, but the amount of tax so computed shall be reduced (but not below zero) by the sum of—

"(A) the amount of the tax imposed by paragraph (1)(A) paid with respect to such other distributions, plus

"(B) that portion of the tax on the aggregated total taxable amounts which is attributable to annuity contracts.

For purposes of this paragraph, a beneficiary of a trust to which a lump sum distribution is made shall be treated as the recipient of such distribution if the beneficiary is an employee (including an employee within the meaning of section 401(c)(1)) with respect to the plan under which the distribution is made or if the beneficiary is treated as the owner of such trust for purposes of subpart E of part I of subchapter J. In the case of the distribution of an annuity contract, the taxable amount of such distribution shall be deemed to be the current actuarial value of the contract, determined on the date of such distribution. In the case of a lump sum distribution with respect to any individual which is made only to two or more trusts, the tax imposed by paragraph (1)(A) shall be computed as if such distribution was made to a single trust, but the liability for such tax shall be apportioned among such trusts according to the relative amounts received by each. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

"(3) Allowance of deduction.—The ordinary income portion of a lump sum distribution for the taxable year shall be allowed as a deduction from gross income for such taxable year, but only to the extent included in the taxpayer's gross income for such taxable year.

"(4) Definitions and special rules.—

"(A) Lump sum distribution.—For purposes of this section and section 403, the term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

"(i) on account of the employee's death,

"(ii) after the employee attains age 59½,

"(iii) on account of the employee's separation from the service, or

"(iv) after the employee has become disabled (within the meaning of section 72(m)(7))

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an employees without regard to section 401(c)(1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this subparagraph, a distribution of an an-

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nuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution. For purposes of this subparagraph, a distribution to two or more trusts shall be treated as a distribution to one recipient.

"(*B*) ELECTION OF LUMP SUM TREATMENT.—*For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distributed under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.*

"(*C*) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—*For purposes of determining the balance to the credit of an employee under subparagraph (A)—*

"*(i) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and*

"*(ii) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a) (2) shall not be taken into account.*

"(*D*) TOTAL TAXABLE AMOUNT.—*For purposes of this section and section 403, the term 'total taxable amount' means, with respect to a lump sum distribution, the amount of such distribution which exceeds the sum of—*

"(*i*) *the amounts considered contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, and*

"(*ii*) *the net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.*

"(*E*) ORDINARY INCOME PORTION.—*For purposes of this section, the term 'ordinary income portion' means, with respect to a lump sum distribution, so much of the total taxable*

amount of such distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(i) the numerator of which is the number of calendar years of active participation by the employee in such plan after December 31, 1973, and

"(ii) the denominator of which is the number of calendar years of active participation by the employee in such plan.

"(F) Employee.—For purposes of this subsection and subsection (a)(2), except as otherwise provided in subparagraph (A), the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) and the employer of such individual is the person treated as his employer under section 401(c)(4).

"(G) Community property laws.—The provisions of this subsection, other than paragraph (3), shall be applied without regard to community property laws.

"(H) Minimum period of service.—For purposes of this subsection (but not for purposes of subsection (a)(2) or section 403 (a)(2) (A)), no amount distributed to an employee from or under a plan may be treated as a lump sum distributed under subparagraph (A) unless he has been a participant in the plan for 5 or more taxable years before the taxable year in which such amounts are distributed.

"(I) Amounts subject to penalty.—This subsection shall not apply to amounts described in clause (ii) of subparagraph (A) of section 72(m) (5) to the extent that section 72(m) (5) applies to such amounts.

"(J) Unrealized appreciation of employer securities.—In the case of any distribution including securities of the employer corporation which, without regard to the requirement of subparagraph (H), would be treated as a lump sum distribution under subparagraph (A), there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation so distributed. In the case of any such distribution or any lump sum distribution including securities of the employer corporation, the amount of net unrealized appreciation of such securities and the resulting adjustments to the basis of such securities shall be determined under regulations prescribed by the Secretary or his delegate.

"(K) Securities.—For purposes of this subsection, the terms 'securities' and 'securities of the employer corporation' have the respective meanings provided by subsection (a)(3)."

(b) Phaseout of Capital Gains Treatment.—

(1) In general.—Section 402(a)(2) (relating to capital gains treatment for certain distributions) is amended to read as follows:

"(2) Capital gains treatment for portion of lump sum distributions.—In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a),

so much of the total taxable amount (as defined in subparagraph (D) of subsection (e)(4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(A) the numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

"(B) the denominator of which is the number of calendar years of active participation by the employee in such plan,

shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction described in this paragraph and the fraction under subsection (e)(4)(E), the Secretary or his delegate may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B), but no distribution to any taxpayer other than an individual estate, or trust may be treated as a lump sum distribution under this paragraph."

(2) Amendment of section 403.—That part of paragraph (2) of section 403(a) which follows clause (ii) of subparagraph (A) thereof is amended to read as follows:

"(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

"(B) Cross reference.—

"For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).".

(c) Conforming Amendments.—

(1) Subparagraph (C) of section 402(a)(3) is repealed.

(2) Paragraph (5) (as in effect on December 31, 1973) of section 402(a) is repealed.

(3) Section 72 is amended by striking out subsection (n) thereof and by redesignating subsections (o) and (p) as (n) and (o), respectively.

(4) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3) are each amended by inserting after "tax preferences)," the following: "section 402(e) (relating to tax on lump sum distributions),".

(5) The third sentence of section 901(a) is amended by inserting "against the tax imposed by section 402(e) (relating to tax on lump sum distributions)," before "against the tax imposed by section 531".

(6) Subsection 1304(b)(2) (relating to special rules) is amended by striking out paragraph (2) and by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

(7) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by inserting before "531" the following: "402(e),".

(8) Sections 871(b)(1) and 877(b) are each amended by inserting ", 402(e)(1)," after "section 1".

(9) Section 62 (defining adjusted gross income), is amended by inserting after paragraph (10) the following new paragraph:

"(11) CERTAIN PORTION OF LUMP-SUM DISTRIBUTIONS FROM PENSION PLANS TAXED UNDER SECTION 402(e).—The deduction allowed by section 402(e)(3)."

(10) Section 122(b)(2) (relating to consideration for the contract) is amended by striking out "72(o)" and inserting "72(n)".

(11) Section 405(e) (relating to capital gains treatment and limitation of tax not to apply to bonds distributed by trusts) is amended by striking out "Section 72(n) and section 402(a)(2)" and inserting "Subsections (a)(2) and (e) of section 402".

(12) Section 406(c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72(n), section 402(a)(2)" and inserting "subsections (a)(2) and (e) of section 402".

(13) Section 407(c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72(n), section 402(a)(2)" and inserting "subsections (a)(2) and (e) of section 402".

(14) Section 1348(b)(1) (relating to earned income) is amended by striking out "72(n), 402(a)(2)" and inserting "402(a)(2), 402(e)".

(15) Section 101(b)(2)(B) is amended by striking out "total distributions payable (as defined in section 402(a)(3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death" and niserting in lieu thereof "a lump sum distribution (as defined in section 402(e)(4))".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.

Sec. 2006. Salary Reduction Regulations.

(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.— Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1977, to an employees' trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in

subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

(b) Administration in the Case of Certain Qualified Pension or Profit-Sharing Plans, Etc., in Existence on June 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1977, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

(1) provided for contributions to an employees' trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or

(2) was maintained as part of an arrangement under which an employee was permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954.

(c) Administration of Law With Respect to Certain Plans.—

(1) Administration in the case of plans described in subsection (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

(A) without regard to the proposed salary reduction regulations (37 F.R. 25938) and without regard to any other proposed salary reduction regulations, and

(B) in the manner in which such law was administered before January 1, 1972.

(2) Administration in the case of qualified profit-sharing plans.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

(A) Revenue Ruling 56–497 (1956—2 C.B. 284),

(B) Revenue Ruling 63–180 (1963—2 C.B. 189), and

(C) Revenue Ruling 68–89 (1968—1 C.B. 402).

(d) Limitation on Retroactivity of Final Regulations.—In the case of any salary reduction regulations which become final after December 31, 1976—

(1) for purposes of chapter 1 of the Internal Revenue Code of 1954 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1977; and

(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

(e) Salary Reduction Regulations Defined.—For purposes of this section, the term "salary reduction regulations" means regulations

dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a), or a plan described in section 403(a) or *405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954).*

SEC. 2008. CERTAIN ARMED FORCES SURVIVOR ANNUITIES.

(a) Treatment of Certain Participants in the Plan.—Section 404(c) (relating to certain negotiated plans) is amended by inserting after the first sentence the following new sentences: "For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

"(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

"(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

"(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection.".

(b) Other Amendments to Section 404(c)(1).—

(1) Paragraph (1) of the first sentence of section 404(c) is amended by striking out "and pensions" and inserting in lieu thereof "or pensions".

(2) The last sentence of section 404(c) is amended by striking out "This subsection" and inserting in lieu thereof "The first and third sentences of this subsection".

(c) Effective Date.—The amendments made by this section shall apply to taxable years ending on or after June 30, 1972.

SEC. 2007. RULES FOR CERTAIN NEGOTIATED PLANS.

(a) In General.—Section 122(a) (relating to certain reduced uniformed services retired pay) is amended to read as follows:

"(a) General rule.—In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code.".

(*b*) *Technical amendments.*—

(*1*) *Section 122(b)(2) is amended by striking out "section 1438" in subparagraph (B) and inserting in lieu thereof "section 1438 or 1452(d)".*

(*2*) *Section 72(o) is amended by inserting after "Plan" in the heading of such section "or Survivor Benefit Plan".*

(*3*) *Section 101(b)(2)(D) is amended by striking out "if the individual who made the election under such chapter" and inserting in lieu thereof "if the member or former member of the uniformed services by reason of whose death such annuity is payable".*

(*4*) *Section 2039(c) is amended by striking out "section 1438" in the last sentence and inserting in lieu thereof "section 1438 or 1452(d)".*

(*c*) *Effective dates.*—*The amendments made by this section apply to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) apply with respect to individuals dying on or after such date.*

TITLE III—JURISDICTION, ADMINISTRATION, ENFORCEMENT; PENSION TASK FORCE, ETC.

Subtitle A—Jurisdiction, Administration, and Enforcement

PROCEDURES IN CONNECTION WITH THE ISSUANCE OF CERTAIN DETERMINATION LETTERS BY THE SECRETARY OF THE TREASURY

SEC. 3001. (a) Before issuing an advance determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954, the Secretary of the Treasury shall require the person applying for the determination to provide, in addition to any material and information necessary for such determination, such other material and information as may reasonably be made available at the time such application is made as the Secretary of Labor may require under title I of this Act for the administration of that title. The Secretary of the Treasury shall also require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who qualifies as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of such Code (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of the application for a determination.

(b)(1) Whenever an application is made to the Secretary of the Treasury for a determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954, the Secretary shall upon request afford an opportunity to comment on the application at any time within 45 days after receipt thereof to—

(A) any employee or class of employee qualifying as an interested party within the meaning of the regulations referred to in subsection (a).

(B) the Secretary of Labor, and

(C) the Pension Benefit Guaranty Corporation.

(2) The Secretary of Labor may not request an opportunity to comment upon such an application unless he has been requested in writing to do so by the Pension Benefit Guaranty Corporation or by the lesser of—

(A) 10 employees, or

(B) 10 percent of the employees

who qualify as interested parties within the meaning of the regulations referred to in subsection (a). Upon receiving such a request, the Sec-

retary of Labor shall furnish a copy of the request to the Secretary of the Treasury within 5 days (excluding Saturdays, Sundays, and legal public holidays (as set forth in section 6103 of title 5, United States Code)).

(3) Upon receiving such a request from the Secretary of Labor, the Secretary of the Treasury shall furnish to the Secretary of Labor such information held by the Secretary of the Treasury relating to the application as the Secretary of Labor may request.

(4) The Secretary of Labor shall, within 30 days after receiving a request from the Pension Benefit Guaranty Corporation or from the necessary number of employees who qualify as interested parties, notify the Secretary of the Treasury, the Pension Benefit Guaranty Corporation, and such employees with respect to whether he is going to comment on the application to which the request relates and with respect to any matters raised in such request on which he is not going to comment. If the Secretary of Labor indicates in the notice required under the preceding sentence that he is not going to comment on all or part of the matters raised in such request, the Secretary of the Treasury shall afford the corporation, and such employees, an opportunity to comment on the application with respect to any matter on which the Secretary of Labor has declined to comment.

(c) The Pension Benefit Guaranty Corporation and, upon petition of a group of employees referred to in paragraph (2), the Secretary of Labor, may intervene in any action brought for declaratory judgment under section 7476 of the Internal Revenue Code of 1954 in accordance with the provisions of such section. The Pension Benefit Guaranty Corporation is permitted to bring an action under such section 7476 under such rules as may be prescribed by the United States Tax Court.

(d) If the Secretary of the Treasury determines that a plan or trust to which this section applies meets the applicable requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 and issues a determination letter to the applicant, the Secretary shall notify the Secretary of Labor of his determination and furnish such information and material relating to the application and determination held by the Secretary of the Treasury as the Secretary of Labor may request for the proper administration of title I of this Act. The Secretary of Labor shall accept the determination of the Secretary of the Treasury as prima facie evidence of initial compliance by the plan with the standards of parts 2, 3, and 4 of subtitle B of title I of this Act. If an application for such a determination is withdrawn, or if the Secretary of the Treasury issues a determination that the plan or trust does not meet the requirements of such part I, the Secretary shall notify the Secretary of Labor of the withdrawal or determination.

(e) This section does not apply with respect to an application for any plan received by the Secretary of the Treasury before the date on which section 410 of the Internal Revenue Code of 1954 applies to the plan, or on which such section will apply if the plan is determined by the Secretary to be a qualified plan.

PROCEDURES WITH RESPECT TO CONTINUED COMPLIANCE WITH REQUIREMENTS RELATING TO PARTICIPATION, VESTING, AND FUNDING STANDARDS

SEC. 3002. (a) In carrying out the provisions of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 with respect to whether a plan or a trust meets the requirements of section 410 (a) or 411 of such Code (relating to minimum participation standards and minimum vesting standards, respectively), the Secretary of the Treasury shall notify the Secretary of Labor when the Secretary of the Treasury issues a preliminary notice of intent to disqualify related to the plan or trust or, if earlier, at the time of commencing any proceeding to determine whether the plan or trust satisfies such requirements. Unless the Secretary of the Treasury finds that the collection of a tax imposed under the Internal Revenue Code of 1954 is in jeopardy, the Secretary of the Treasury shall not issue a determination that the plan or trust does not satisfy the requirements of such section until the expiration of a period of 60 days after the date on which he notifies the Secretary of Labor of such review. The Secretary of the Treasury, in his discretion, may extend the 60-day period referred to in the preceding sentence if he determines that such an extension would enable the Secretary of Labor to obtain compliance with such requirements by the plan within the extension period. Except as otherwise provided in this Act, the Secretary of Labor shall not generally apply part 2 of title I of this Act to any plan or trust subject to sections 410 (a) and 411 of such Code, but shall refer alleged general violations of the vesting or participation standards to the Secretary of the Treasury. (The preceding sentence shall not apply to matters relating to individual benefits.)

(b) Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4971 of the Internal Revenue Code of 1954 (relating to taxes on the failure to meet minimum funding standards), the Secretary of the Treasury shall notify the Secretary of Labor before sending a notice of deficiency with respect to any tax imposed under that section on an employer, and, in accordance with the provisions of subsection (d) of that section, afford the Secretary of Labor an opportunity to comment on the imposition of the tax in the case. The Secretary of the Treasury may waive the imposition of the tax imposed under section 4971(b) of such Code in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be commenced expeditiously with respect to whether the tax imposed under section 4971 of such Code should be applied with respect to any employer to which the request relates. The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 412 of the Internal Revenue Code of 1954 (relating to minimum funding standards) and with respect to the funding standards applicable under title I of this Act in order to coordinate the rules applicable under such standards.

(c) Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of the Internal Revenue Code of 1954 (relating to minimum participation standards, minimum vesting

standards, and minimum funding standards, respectively) shall also apply to the minimum participation, vesting, and funding standards set forth in parts 2 and 3 of subtitle B of title I of this Act. Except as otherwise expressly provided in this Act, the Secretary of Labor shall not prescribe other regulations under such parts, or apply the regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, 412 of the Internal Revenue Code of 1954 and applicable to the minimum participation, vesting, and funding standards under such parts in a manner inconsistent with the way such regulations apply under sections 410(a), 411, and 412 of such Code.

(d) The Secretary of Labor and the Pension Benefit Guaranty Corporation, before filing briefs in any case involving the construction or application of minimum participation standards, minimum vesting standards, or minimum funding standards under title I of this Act, shall afford the Secretary of the Treasury a reasonable opportunity to review any such brief. The Secretary of the Treasury shall have the right to intervene in any such case.

PROCEDURES IN CONNECTION WITH PROHIBITED TRANSACTIONS

SEC. 3003. (a) Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) the Secretary of the Treasury shall, in accordance with the provisions of subsection (h) of such section, notify the Secretary of Labor before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b) of such section, and, in accordance with the provisions of subsection (h) of such section, afford the Secretary an opportunity to comment on the imposition of the tax in any case. The Secretary of the Treasury shall have authority to waive the imposition of the tax imposed under section 4975(b) in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be carried out with respect to whether the tax imposed by section 4975 of such Code should be applied to any person referred to in the request.

(b) The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) and with respect to the provisions of title I of this Act relating to prohibited transactions and exemptions therefrom in order to coordinate the rules applicable under such standards.

(c) Whenever the Secretary of Labor obtains information indicating that a party-in-interest or disqualified person is violating section 406 of this Act, he shall transmit such information to the Secretary of the Treasury.

COORDINATION BETWEEN THE DEPARTMENT OF THE TREASURY AND THE DEPARTMENT OF LABOR

SEC. 3004. (a) Whenever in this Act or in any provision of law amended by this Act the Secretary of the Treasury and the Secretary

of Labor are required to carry out provisions relating to the same subject matter (as determined by them) they shall consult with each other and shall develop rules, regulations, practices, and forms which, to the extent appropriate for the efficient administration of such provisions in order to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden of compliance with such provisions by plan administrators, employers, and employees.

(b) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary of the Treasury and the Secretary of Labor may make such arrangements or agreements for coopeartion or mutual assistance in the performance of their functions under this Act, and the functions of any such agency as they find to be practicable and consistent with law. The Secretary of the Treasury and the Secretary of Labor may utilize, on a reimbursable or other basis, the facilities or services, of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services, of any of its employees, with the lawful consent of such department, agency, or establishment with or without reimbursement; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary of the Treasury and the Secretary of Labor and, to the extent permitted by law, to provide such information and facilities as they may request for their assistance in the performance of their functions under this Act. The Attorney General or his representative shall receive from the Secretary of the Treasury and the Secretary of Labor for appropriate action such evidence developed in the performance of their functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

Subtitle B—Joint Pension Task Force; Studies

PART 1—JOINT PENSION TASK FORCE

ESTABLISHMENT

Sec. 3021. The staffs of the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, the Joint Committee on Internal Revenue Taxation, and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall carry out the duties assigned under this title to the Joint Pension Task Force. By agreement among the chairmen of such Committees, the Joint Pension Task Force shall be furnished with office space, clerical personnel, and such supplies and equipment as may be necessary for the Joint Pension Task Force to carry out its duties under this title.

DUTIES

Sec. 3022. (a) The Joint Pension Task Force shall, within 24 months after the date of enactment of this Act, make a full study and review of—

(1) the effect of the requirements of section 411 of the Internal Revenue Code of 1954 and of section 203 of this Act to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements;

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under title IV of this Act (relating to termination insurance) of plans established and maintained by small employers;

(4) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(5) such other matter as any of the committees referred to in section 3021 may refer to it.

(b) The Joint Pension Task Force shall report the results of its study and review to each of the committees referred to in section 3021.

PART 2—OTHER STUDIES

CONGRESSIONAL STUDY

Sec. 3031. (a) The Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of

the United States, by any State (including the District of Columbia) or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Such study shall include an analysis of—

(1) the adequacy of existing levels of participation, vesting, and financing arrangements,

(2) existing fiduciary standards, and

(3) the necessity for Federal legislation and standards with respect to such plans.

In determining whether any such plan is adequately financed, each committee shall consider the necessity for minimum funding standards, as well as the taxing power of the government maintaining the plan.

(b) Not later than December 31, 1976, the Committee on Education and Labor and the Committee on Ways and Means shall each submit to the House of Representatives the results of the studies conducted under this section, together with such recommendations as they deem appropriate. The Committee on Finance and the Committee on Labor and Public Welfare shall each submit to the Senate the results of the studies conducted under this section together with such recommendations as they deem appropriate not later than such date.

PROTECTION FOR EMPLOYEES UNDER FEDERAL PROCUREMENT, CONSTRUCTION, AND RESEARCH CONTRACTS AND GRANTS

SEC. 3032. (a) The Secretary of Labor shall, during the 2-year period beginning on the date of the enactment of this Act, conduct a full and complete study and investigation of the steps necessary to be taken to insure that professional, scientific, and technical personnel and others working in associated occupations employed under Federal procurement, construction, or research contracts or grants will, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts, grants, or procurement policies. The Secretary of Labor shall report the results of his study and investigation to the Congress within 2 years after the date of the enactment of this Act. The Secretary of Labor is authorized, to the extent provided by law, to obtain the services of private research institutions and such other persons by contract or other arrangement as he determines necessary in carrying out the provisions of this section.

(b) In the course of conducting the study and investigation described in subsection (a), and in developing the regulations referred to in subsection (c), the Secretary of Labor shall consult—

(1) with appropriate professional societies, business organizations, and labor organizations, and

(2) with the heads of interested Federal departments and agencies.

(c) Within 1 year after the date on which he submits his report to the Congress under subsection (a), the Secretary of Labor shall, if he determines it to be feasible, develop regulations which will provide the protection of pension and retirement rights and benefits referred to in subsection (a).

(d) (1) Any regulations developed pursuant to subsection (c) shall take effect if, and only if—

(A) the Secretary of Labor, not later than the day which is 3 years after the date of the enactment of this Act, delivers a copy of such regulations to the House of Representatives and a copy to the Senate, and

(B) before the close of the 120-day period which begins on the day on which the copies of such regulations are delivered to the House of Representatives and to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval.

(2) For purposes of this subsection, the term "resolution of disapproval" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the —— does not favor the taking effect of the regulations transmitted to the Congress by the Secretary of Labor on —— ", the first blank space therein being filled with the name of the resolving House and the second blank space therein being filled with the day and year.

(3) A resolution of disapproval in the House of Representatives shall be referred to the Committee on Education and Labor. A resolution of disapproval in the Senate shall be referred to the Committee on Labor and Public Welfare.

(4) (A) If the committee to which a resolution of disapproval has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution of disapproval.

(5) (A) When the committee has reported, or has been discharged from further consideration of, a resolution of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution of disapproval shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit

debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6) (A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

(7) Whenever the Secretary of Labor transmits copies of the regulations to the Congress, a copy of such regulations shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(8) The 120 day period referred to in paragraph (1) hall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(9) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in paragraph (2); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

Subtitle C—Enrollment of Actuaries

ESTABLISHMENT OF JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Sec. 3041. The Secretary of Labor and the Secretary of the Treasury shall, not later than the last day of the first calendar month beginning after the date of the enactment of this Act, establish a Joint Board for the Enrollment of Actuaries (hereinafter in this part referred to as the "Joint Board").

ENROLLMENT BY JOINT BOARD

Sec. 3042. (a) The Joint Board shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans to which this Act applies and, upon application by any individual, shall enroll such individual if the Joint Board finds that such individual satisfies such standards and qualifications. With respect to individuals applying for enrollment before

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January 1, 1976, such standards and qualifications shall include a requirement for an appropriate period of responsible actuarial experience relating to pension plans. With respect to individuals applying for enrollment on or after January 1, 1976, such standards and qualifications shall include—

(1) education and training in actuarial mathematics and methodology, as evidenced by—

(A) a degree in actuarial mathematics or its equivalent from an accredited college or university,

(B) successful completion of an examination in actuarial mathematics and methodology to be given by the Joint Board, or

(C) successful completion of other actuarial examinations deemed adequate by the Joint Board, and

(2) an appropriate period of responsible actuarial experience.

Notwithstanding the preceding provisions of this subsection, the Joint Board may provide for the temporary enrollment for the period ending on January 1, 1976, of actuaries under such interim standards as it deems adequate.

(b) The Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this section if the Joint Board finds that such individual—

(1) has failed to discharge his duties under this Act, or

(2) does not satisfy the requirements for enrollment as in effect at the time of his enrollment.

The Joint Board may also, after notice and opportunity for hearing, suspend or terminate the temporary enrollment of an individual who fails to discharge his duties under this Act or who does not satisfy the interim enrollment standards.

AMENDMENT OF INTERNAL REVENUE CODE

SEC. 3043. Section 7701 (a) of the Internal Revenue Code of 1954 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(35) ENROLLED ACTUARY.—The term 'enrolled actuary' means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974."

TITLE IV—PLAN TERMINATION INSURANCE

DEFINITIONS

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

SEC. 4001. (a) For purposes of this title, the term—

(1) "administrator" means the person or persons described in paragraph (16) of section 3 of this Act;

(2) "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(4) and (e)(3)(C) of such Code, as one employer) who has made contributions to or under a plan under which more than one employer makes contributions for each of—

(A) the two immediately preceding plan years, or

(B) the second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year;

(3) "multiemployer plan" means a multiemployer plan as defined in section 414(f) of the Internal Revenue Code of 1954 (as added by this Act but without regard to whether such section is in effect on the date of enactment of this Act);

(4) "corporation", except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 4002;

(5) "fund" means the appropriate fund established under section 4005;

(6) "basic benefits" means benefits guaranteed under section 4022 other than under section 4022(c); and

(7) "non-basic benefits" means benefits guaranteed under section 4022(c).

(b) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954. For purposes of this title, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer. The regulations prescribed under the preceding sentence shall be consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under section 414(c) of the Internal Revenue Code of 1954.

PENSION BENEFIT GUARANTY CORPORATION

Sec. 4002. (a) There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this title, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this title, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this title applies, and

(3) to maintain premiums charged by the corporation under section 4007 at the lowest level consistent with carrying out its obligations under this title.

(b) To carry out the purposes of this title, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act and in addition to any specific power granted to the corporation elsewhere in this title or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by the board of directors, bylaws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this Act;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this Act in any State or other jurisdiction without regard to qualification, licensing, or other requirements imposed by law in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein wherever situated;

(6) to appoint and fix the compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, and, to the extent desired by the corporation, require bonds for them and fix the penalty thereof, and to appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(7) to utilize the personnel and facilities of any other agency or department of the United States Government, with or without reimbursement, with the consent of the head of such agency or department; and

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the ex-

ercise of all other rights and powers granted to the corporation by this Act.

(c) Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) In addition to the number of positions authorized by subsection (a), the Pension Benefit Guaranty Corporation is authorized, without regard to any other provision of this section, to place one position in the corporation at GS–18 and a total of 10 positions in the corporation at GS–16 and 17.".

(d) The board of directors of the corporation consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. Members of the board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board. The Secretary of Labor is the chairman of the board of directors.

(e) The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

(f) As soon as practicable, but not later than 180 days after the date of enactment of this Act, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. The chairman of the board shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less often than once each year.

(g) (1) The corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of any fund established under section 4005), shall be exempt from all taxation now or hereafter imposed by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

(2) The receipts and disbursements of the corporation in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitations imposed by statute on budget outlays of the United States. Except as explicitly provided in this title, the United States is not liable for any obligation or liability incurred by the corporation.

(3) Section 101 of the Government Corporation Control Act (31 U.S.C. 846) is amended by inserting before the period a semicolon and the following: "and Pension Benefit Guaranty Corporation."

(h) (1) There is established an advisory committee to the corporation, for the purpose of advising the corporation as to its policies and procedures relating to (A) the appointment of trustees in termination proceedings, (B) investment of moneys, (C) whether plans being terminated should be liquidated immediately or continued in operation under a trustee, and (D) such other issues as the corporation may request from time to time. The advisory committee may also recommend persons for appointment as trustees in termination proceedings, make recommendations with respect to the investment of moneys in the

funds, and advise the corporation as to whether a plan subject to being terminated should be liquidated immediately or continued in operation under a trustee.

(2) The advisory committee consists of seven members appointed, from among individuals recommended by the board of directors, by the President. Of the seven members, two shall represent the interests of employee organizations, two shall represent the interests of employers who maintain pension plans, and three shall represent the interests of the general public. The President shall designate one member as chairman at the time of the nomination of that member.

(3) Members shall serve for terms of 3 years each, except that, of the members first appointed, one of the members representing the interests of employee organizations, one of the members representing the interests of employers, and one of the members representing the interests of the general public shall be appointed for terms of 2 years each, one of the members representing the interests of the general public shall be appointed for a term of 1 year, and the other members shall be appointed to full 3-year terms. The advisory committee shall meet at least six times each year and at such other times as may be determined by the chairman or requested by any three members of the advisory committee.

(4) Members shall be chosen on the basis of their experience with employee organizations, with employers who maintain pension plans, with the administration of pension plans, or otherwise on account of outstanding demonstrated ability in related fields. Of the members serving on the advisory committee at any time, no more than four shall be affiliated with the same political party.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of a member of the advisory committee shall be filled in the manner in which that office was originally filled.

(6) The advisory committee shall appoint and fix the compensation of such employees as it determines necessary to discharge its duties, including experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. The corporation shall furnish to the advisory committee such professional, secretarial, and other services as the committee may request.

(7) Members of the advisory committee shall, for each day (including traveltime) during which they are attending meetings or conferences of the committee or otherwise engaged in the business of the committee, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection.

INVESTIGATORY AUTHORITY; COOPERATION WITH OTHER AGENCIES; CIVIL ACTIONS

SEC. 4003. (a) The corporation may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any such investigation, or any other proceeding under this title, any member of the board of directors of the corporation, or any officer designated by the chairman, may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the corporation deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpena issued to, any person, the corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue an order requiring such person to appear before the corporation, or member or officer designated by the corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

(d) In order to avoid unnecessary expense and duplication of functions among government agencies, the corporation may make such arrangements or agreements for cooperation or mutual assistance in the performance of its functions under this title as is practicable and consistent with law. The corporation may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment. The head of each department, agency, or establishment of the United States shall cooperate with the corporation and, to the extent permitted by law, provide such information and facilities as it may request for its assistance in the performance of its functions under this title. The Attorney General or his representative shall receive from the corporation for appropriate action such evidence developed in the performance of its functions under this title as may be found to warrant consideration for criminal prosecution under the provisions of this or any other Federal law.

(e) (1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to redress violations of the provisions of this title.

(2) Except as otherwise provided in this title, where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) The district courts of the United States shall have jurisdiction of actions brought by the corporation under this title without regard to the amount in controversy in any such action.

(4) Upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation is a party, it is the duty of that court to assign such case for hearing at the earliest practical date and to cause such case to be in every way expedited.

(5) In any action brought under this title, whether to collect premiums, penalties, and interest under section 4007 or for any other purpose, the court may award to the corporation all or a portion of the costs of litigation incurred by the corporation in connection with such action.

TEMPORARY AUTHORITY FOR INITIAL PERIOD

Sec. 4004. (a) Notwithstanding anything to the contrary in this title, the corporation may, upon receipt of notice that a plan is to be terminated or upon making a determination described in section 4042, appoint a receiver whose powers shall take effect immediately. The receiver shall assume control of such plan and its assets, protecting the interests of all interested persons during subsequent proceedings.

(b)(1) Within a reasonable time, not exceeding 20 days, after the appointment of a receiver under subsection (a), the corporation shall apply to an appropriate United States district court for a decree approving such appointment. The court to which application is made shall issue a decree approving such appointment unless it determines that it would not be in the best interests of the participants and beneficiaries of the plan.

(2) If the court to which application is made under paragraph (1) dismisses the application with prejudice, or if the corporation fails to apply for a decree under paragraph (1) within 20 days after the appointment of the special receiver, the receiver shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of the 20 day period. The receiver shall not be liable to the plan or to any other person for his acts as receiver other than for willful misconduct, or for conduct in violation of the provisions of part 4 of subpart B of title I of this Act (except to the extent that the provisions of section 4042(d)(1)(A) provide otherwise).

(c) The corporation is authorized, as an alternative to appointing a receiver under subsection (a), to direct a plan administrator to apply to a district court of the United States for the appointment of a receiver to assume control of the plan and its assets for the purpose of protecting the interests of all interested persons until the plan can be terminated under the provisions of this title.

(d) A receiver appointed under this section has the powers of a trustee under section 4042 (d) (1) (A) and (B), and shall report to

the corporation and the court on the plan from time to time as required by the corporation or the court, respectively. As soon as practicable after his appointment, a receiver appointed under this section shall determine whether the assets of the plan are sufficient to discharge when due all obligations of the plan with respect to benefits guaranteed under this title in accordance with the requirements of section 4044. If the determination of the receiver is approved by the corporation and the court, the receiver shall proceed as if he were a trustee appointed under section 4042.

(e) A receiver may not be appointed under this section more than 270 days after the date of enactment of this Act.

(f) In addition to its other powers under this title, for only the first 270 days after the date of enactment of this Act the corporation may—

(1) contract for printing without regard to the provisions of chapter 5 of title 44, United States Code,

(2) waive any notice required under this title if the corporation finds that a waiver is necessary or appropriate,

(3) extend the 90-day period referred to in section 4041(a) for an additional 90 days without the agreement of the plan administrator and without application to a court as required under section 4041(d), and

(4) waive the application of the provisions of sections 4062, 4063, and 4064 to, or reduce the liability imposed under such sections on, any employer with respect to a plan terminating during that 270 day period if the corporation determines that such waiver or reduction is necessary to avoid unreasonable hardship in any case in which the employer was not able, as a practical matter, to continue the plan.

ESTABLISHMENT OF PENSION BENEFIT GUARANTY FUNDS

Sec. 4005. (a) There are established on the books of the Treasury of the United States four revolving funds to be used by the corporation in carrying out its duties under this title. One of the funds shall be used in connection with benefits guaranteed under sections 4022 and 4023 (but not non-basic benefits) with respect to plans other than multiemployer plans, one of the funds shall be used with respect to such benefits guaranteed under such sections (other than non-basic benefits) for multiemployer plans, one of the funds shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 4022, for plans which are not multiemployer plans, and the remaining fund shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 4022, for multiemployer plans. Whenever in this title reference is made to the term "fund" the reference shall be considered to refer to the appropriate fund established under this subsection.

(b)(1) Each fund established under this section shall be credited with the appropriate portion of—

(A) funds borrowed under subsection (c),

(B) premiums, penalties, interest, and charges collected under this title,

(C) the value of the assets of a plan administered under section 4042 by a trustee to the extent that they exceed the liabilities of such plan,

(D) the amount of any employer liability payments collected under section 4067, to the extent that such payments exceed liabilities of the plan (taking into account all other plan assets),

(E) earnings on investments of the fund or on assets credited to the fund under this subsection, and

(F) receipts from any other operations under this title.

(2) Subject to the provisions of subsection (a), each fund shall be available—

(A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 4022,

(B) for making such payments as the corporation determines are necessary under section 4023,

(C) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best protect the interests of the corporation, participants in the plan being terminated, and other insured plans,

(D) to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c), and

(E) to pay the operational and administrative expenses of the corporation, including reimbursement of the expenses incurred by the Department of the Treasury in maintaining the funds, and the Comptroller General in auditing the corporation.

(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States but, until all borrowings under subsection (c) have been repaid, the obligations in which such excess moneys are invested may not yield a rate of return in excess of the rate of interest payable on such borrowings.

(c) The corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

PREMIUM RATES

Sec. 4006. (a) (1) The corporation shall prescribe such insurance premium rates and such coverage schedules for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this title. The premium rates charged by the corporation for any period shall be uniform for all plans, other than multiemployer plans insured by the corporation, with respect to basic benefits guaranteed by it under section 4022, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under such section. The premium rates charged by the corporation for any period for non-basic benefits guaranteed by it shall be uniform by category of non-basic benefit guaranteed, shall be based on the risk insured in each category, and shall reflect the experience of the corporation (including reasonably anticipated experience) in guaranteeing such benefits.

(2) The corporation shall maintain separate coverage schedules for—

(A) basic benefits guaranteed by it under section 4022 for—

(i) plans which are multiemployer plans, and

(ii) plans which are not multiemployer plans,

(B) employers insured under section 4023 against liability under subtitle D of this title, and

(C) non-basic benefits.

Except as provided in paragraph (3), the corporation may revise such schedules whenever it determines that revised rates are necessary, but a revised schedule described in subparagraph (A) shall apply only to plan years beginning more than 30 days after the date on which the Congress approves such revised schedule by a concurrent resolution.

(3) Except as provided in paragraph (4), the rate for all plans for benefits guaranteed under section 4022 (other than non-basic benefits) with respect to plan years ending no more than 35 months after the effective date of this title is—

(A) in the case of each plan which is not a multiemployer plan, an amount equal to one dollar for each individual who is a participant in such plan at any time during the plan year; and

(B) in the case of a multiemployer plan, an amount equal to fifty cents for each individual who is a participant in such plan at any time during such plan year.

The rate applicable under this paragraph to any plan the plan year of which does not begin on the date of enactment of this Act is a fraction of the rate described in the preceding sentence, the numerator of which is the number of months which end before the date on which the new plan year commences and the denominator of which is 12. The corporation is authorized to prescribe regulations under which the rate described in subparagraph (B) will not apply to the same participant in any multiemployer plan more than once for any plan year.

(4) Upon notification filed with the corporation not less than 60 days after the date on which the corporation publishes the rates applicable under paragraph (5), at the election of a plan the rate applicable to that plan with respect to the second full plan year to which

this section applies beginning after the date of enactment of this Act shall be the greater of—

(A) an alternative rate determined under paragraph (5), or

(B) one-half of the rate applicable to the plan under paragraph (3).

In the case of a multiemployer plan, the rate prescribed by this paragraph (at the election of a plan) for the second full plan year is also the applicable rate for plan years succeeding the second full plan year and ending before the full plan year first commencing after December 31, 1977.

(5) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 4022 the corporation shall establish such rates and bases in coverage schedules for plan years beginning 24 months or more after the date of enactment of this Act in accordance with the provisions of this paragraph. The corporation shall publish the rate schedules first applicable under this paragraph in the Federal Register not later than 270 days after the date of the enacement of this Act.

(A) The corporation may establish annual premiums composed of—

(i) a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent for plans which are not multiemployer plans and not in excess of 0.025 percent for multiemployer plans, and

(ii) an additional charge based on the rate applicable to the present value of the basic benefits of the plan which are guaranteed, determined separately for multiemployer plans and for plans which are not multiemployer plans.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level (determined separately for multiemployer plans and for plans which are not multiemployer plans) which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the premiums referred to in clause (i) of this subparagraph.

(B) The corporation may establish annual premiums based on—

(i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),

(ii) unfunded basic benefits guaranteed under this title, but such premium rates shall not exceed the limitations applicable under subparagraph (A)(i), or

(iii) total guaranteed basic benefits, but such premium rates may not exceed the rates determined under subparagraph (A)(ii).

If the corporation uses 2 or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

(6) The corporation shall by regulation define the terms "value of the assest" and "present value of the benefits of the plan which are

guaranteed" in a manner consistent with the purposes of this title and the provisions of this section.

(b)(1) In order to place a revised coverage schedule (other than a schedule described in subsection (a)(2) (B) or (C) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Public Welfare of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the Congress favors the proposed revised coverage schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ———.", the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

(4) A resolution shall be referred to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Public Welfare of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) When a committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been dis-

agreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

PAYMENT OF PREMIUMS

SEC. 4007. (a) The plan administrator of each plan shall pay the premiums imposed by the corporation under this title with respect to that plan when they are due. Any employer obtaining contingent liability coverage under section 4023 shall pay the premiums imposed by the corporation under that section when due. Premiums under this title are payable at the time, and on an estimated, advance, or other basis, as determined by the corporation. Premiums imposed by this title on the date of enactment (applicable to that portion of any plan year during which such date occurs) are due within 30 days after such date. Premiums imposed by this title on the first plan year commencing after the date of enactment of this Act are due within 30 days after such plan year commences. Premiums shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure, or until a trustee is appointed pursuant to section 4042, whichever is earlier.

(b) If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the plan administrator obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the plan administrator, but the corporation may not grant a waiver if it appears that the plan administrator will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of the Internal Revenue Code of 1954 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

(c) If any plan administrator fails to pay a premium when due, the corporation is authorized to bring a civil action in any district court

of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or in which a defendant resides or is found for the recovery of the amount of the premium, penalty, and interest, and process may be served in any other district. The district courts of the United States shall have jurisdiction over actions brought under this subsection by the corporation without regard to the amount in controversy.

(d) The corporation shall not cease to guarantee basic benefits on account of the failure of a plan administrator to pay any premium when due.

REPORT BY THE CORPORATION

SEC. 4008. As soon as practicable after the close of each fiscal year the corporation shall transmit to the President and the Congress a report relative to the conduct of its business under this title for that fiscal year. The report shall include financial statements setting forth the finances of the corporation at the end of such fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year and shall include an actuarial evaluation of the expected operations and status of the funds established under section 4005 for the next five years (including a detailed statement of the actuarial assumptions and methods used in making such evaluation).

Portability Assistance

SEC. 4009. The corporation shall provide advice and assistance to individuals with respect to evaluating the economic desirability of establishing individual retirement accounts or other forms of individual retirement savings for which a deduction is allowable under section 219 of the Internal Revenue Code of 1954 and with respect to evaluating the desirability, in particular cases, of transferring amounts representing an employee's interest in a qualified plan to such an account upon the employee's separation from service with an employer.

SUBTITLE B—COVERAGE

PLANS COVERED

SEC. 4021. (a) Except as provided in subsection (b), this section applies to any plan (including a successor plan) which, for a plan year—

(1) is an employee pension benefit plan (as defined in paragraph (2) of section 3 of this Act) established or maintained—

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 (as in effect for the preceding 5 plan years of the plan) applicable to plans described in paragraph (2) for the preceding 5 plan years; or

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of the Internal Revenue Code of 1954, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of such Code.

For purposes of this title, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) This section does not apply to any plan—

(1) which is an individual account plan, as defined in paragraph (34) of section 3 of this Act,

(2) established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act,

(3) which is a church plan as defined in section 414(e) of the Internal Revenue Code of 1954, unless that plan has made an election under section 410(d) of such Code, and has notified the corporation in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this part apply to it,

(4)(A) established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to or under the plan is made by employers of participants in the plan, or

(B) of which a trust described in section 501(c)(18) of such Code is a part;

(5) which has not at any time after the date of enactment of this Act provided for employer contributions;

(6) which is unfunded and which is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(7) which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens;

(8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Internal Revenue Code of 1954 on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is maintained for such purpose, that part shall be treated for purposes of this title, as a separate plan which is an excess benefit plan;

(9) which is established and maintained exclusively for substantial owners as defined in section 4022(b)(6);

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act;

(11) maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35) (B) of section 3 of this Act; or

(13) established and maintained by a professional service employer which does not at any time after the date of enactment of this Act have more than 25 active participants in the plan.

(c) (1) For purposes of subsection (b) (1), the term "individual account plan" does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b) (13)—

(A) the term "professional service employer" means any proprietorship, partnership, corporation, or other association or organization (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

(B) the term "professional individuals" includes but is not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described in subsection (b) (13) if, at any time after the date of enactment of this Act the plan has more than 25 active participants.

BENEFITS GUARANTEED

Sec. 4022. (a) Subject to the limitations contained in subsection (b), the corporation shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when section 4021 applies to it.

(b) (1) Except to the extent provided in paragraph (8)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 4021 (a)) has been in effect includes the time a previously established plan (within the meaning of section 4021 (a))

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was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 4021 does not apply on the day after the date of enactment of this Act, the 60 month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits.

(4) (A) The actuarial value of a benefit, for purposes of this subsection, shall be determined in accordance with regulations prescribed by the corporation.

(B) For purposes of paragraph (3)—

(i) the term "gross income" means "earned income" within the meaning of section 911(b) of the Internal Revenue Code of 1954 (determined without regard to any community property laws),

(ii) in the case of a participant in a plan under which contributions are made by more than one employer, amounts received as gross income from any employer under that plan shall be aggregated with amounts received from any other employer under that plan during the same period, and

(iii) any non-basic benefit shall be disregarded.

(5) Notwithstanding paragraph (3), no person shall receive from the corporation for basic benefits with respect to a participant an amount, or amounts, with an actuarial value which exceeds a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under paragraph (3)(B) at the time of the last plan termination.

(6) (A) For purposes of this title, the term "substantial owner" means an individual who—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interests in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1954 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this title an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) (as limited under paragraph (3) of this subsection).

(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.

(7)(A) No benefits accrued under a plan after the date on which the Secretary of the Treasury issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401(a) of the Internal Revenue Code of 1954, or that the plan does not meet the requirements of section 404(a)(2) of such Code, are guaranteed under this section unless such determination is erroneous. This subparagraph does not apply if the Secretary subsequently issues a notice that such trust meets the requirements of section 401(a) of such Code or that the plan meets the requirements of section 404(a)(2) of such Code and if the Secretary determines that the trust or plan has taken action necessary to meet such requirements during the period between the issuance of the notice referred to in the preceding sentence and the issuance of the notice referred to in this sentence.

(B) No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury to determine that any trust under the plan has ceased to meet the requirements of section 401(a) of the Internal Revenue Code of 1954 or that the plan has ceased to meet the requirements of section 404(a)(2) of such Code, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is revoked as of the date it was first effective or amended to comply with such requirements.

(8) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of—

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) $20 per month,

multiplied by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect. In determining how many years a plan or amendment has been in effect for purposes of this paragraph, the first 12 months following the date on which the plan or amendment is made or first becomes effective (whichever is later) constitutes one year, and each consecutive period of 12 months thereafter constitutes an additional year. This paragraph does not apply to benefits payable under a plan unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this title.

(c) The corporation is authorized to guarantee the payment of such other classes of benefits and to establish the terms and conditions under which such other classes of benefits are guaranteed as it determines to be appropriate.

CONTINGENT LIABILITY COVERAGE

SEC. 4023. (a) The corporation shall insure any employer who maintains or contributes to or under a plan to which section 4021 applies against the payment of any liability imposed on him under subtitle D of this title in the event of a termination of that plan. The corporation may develop arrangements with persons engaged in the business of providing insurance under which the insurance coverage described in the preceding sentence could be provided in whole or in part by such private insurers. In developing such arrangements the corporation shall devise a system under which risks are equitably distributed between the corporation and private insurers with respect to the classes of employers insured by each.

(b) The corporation is authorized to prescribe and collect in such manner as it determines to be appropriate premiums for insurance offered under subsection (a). If the corporation requires all employers to which this title applies to purchase coverage under this section, the provisions of section 4007(b) and (c) apply to the collection of premiums under this section. The premiums shall be determined by the corporation and revised by it from time to time as may be necessary, and shall be chargeable at a rate sufficient to fund any payment by the corporation becoming necessary under such coverage.

(c) If the corporation is, in its determination, able to develop a satisfactory arrangement with private insurers, within 36 months after the date of enactment of this Act, to carry out the program of insurance authorized by this section in whole or in part, the corporation is authorized to require employers to elect coverage by such private insurance or by the corporation at such times and in such manner as the corporation determines necessary.

(d) No payment may be made by the corporation under any insurance provided by it under this section unless the premiums on such insurance have been paid by the employer and the insurance has been in effect (with respect to any benefit) for more than 60 months. The corporation is authorized to prescribe conditions under which no payment will be made by it under any insurance offered under this section without regard to whether premiums for such insurance have been paid.

(e) Nothing in this section precludes the purchase by the employer of insurance from any other person, or limits the circumstances under which that insurance is payable, or in any way limits the terms and conditions of such insurance, except that the corporation may prescribe as a condition precedent to the purchase of such insurance the payment of a reinsurance premium or other reasonable fee under this section determined by the corporation to be necessary to assure the liquidity and adequacy of any fund or funds established to carry out the provisions of this section.

(f) In carrying out its duties under subsection (a) to develop arrangements with private insurers the corporation shall consider as an alternative or as a supplement to private insurance the feasibility of using private industry guarantees, indemnities, or letters of credit.

Subtitle C—Terminations

TERMINATION BY PLAN ADMINISTRATOR

Sec. 4041. (a) Before the effective date of the termination of a plan, the plan administrator shall file a notice with the corporation that the plan is to be terminated on a proposed date (which may not be earlier than 10 days after the filing of the notice), and for a period of 90 days after the proposed termination date the plan administrator shall pay no amount pursuant to the termination procedure of the plan unless, before the expiration of such period, he receives a notice of sufficiency under subsection (b). Upon receiving such a notice, the plan administrator may proceed with the termination of the plan in a manner consistent with this subtitle.

(b) If the corporation determines that, after application of section 4044, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator of such determination as soon as practicable.

(c) If, within such 90-day period, the corporation finds that it is unable to determine that, if the assets of the plan are allocated in accordance with the provisions of section 4044, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator within such 90-day period of that finding. When the corporation issues a notice under this subsection, it shall commence proceedings in accordance with the provisions of section 4042. Upon receiving a notice under this subsection, the plan administrator shall refrain from taking any action under the proposed termination.

(d) The corporation and the plan administrator may agree to extend the 90-day period provided by this section by a written agreement signed by the corporation and the plan administrator before the expiration of the 90-day period, or the corporation may apply to an appropriate court (as defined in section 4042(g)) for an order extending the 90-day period provided by this section. The 90-day period shall be extended as provided in the agreement or in any court order obtained by the corporation. The 90-day period may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon

extension of the 90-day period, or by subsequent order of the court. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator or as specified in the court order.

(e) If, after the plan administrator has begun to terminate the plan as authorized by this section, the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay basic benefits when due, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall institute appropriate proceedings under section 4042. The plan administrator terminating a plan shall furnish such reports to the corporation as it may require for purposes of its duties under this section.

(f) For purposes of subsection (a), a plan with respect to which basic benefits are guaranteed shall be treated as terminated upon the adoption of an amendment to such plan, if, after giving effect to such amendment, the plan is a plan described in section 4021(b)(1).

(g) Notwithstanding any other provision of this title, a plan administrator or the corporation may petition the appropriate court for the appointment of a trustee in accordance with the provisions of section 4042 if the interests of the participants and beneficiaries would be better served by the appointment of the trustee.

TERMINATION BY CORPORATION

SEC. 4042. (a) The corporation may institute proceedings under this section to terminate a plan whenever it determines that—

(1) the plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code of 1954, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of such Code has been mailed with respect to the tax imposed under section 4971(a) of such Code,

(2) the plan is unable to pay benefits when due,

(3) the reportable event described in section 4043(b)(7) has occurred, or

(4) the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

The corporation may prescribe a simplified procedure to follow in terminating small plans as long as that procedure includes substantial safeguards for the rights of the participants and beneficiaries under the plans, and for the employers who maintain such plans (including the requirement for a court decree under subsection (c)). The corporation is authorized to pool the assets of such small plans for purposes of administration and such other purposes, not inconsistent with its duties to the plan participants and the employer maintaining the plan under this title, as it determines to be required for the efficient administration of this title.

(b) Whenever the corporation makes a determination under subsection (a) with respect to a plan it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determination

is made pending the issuance of a decree under subsection (c) ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan consents to the appointment of a trustee, or fails to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer the plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary. The corporation may request that it be appointed as trustee of a plan in any case.

(c) If the corporation has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subsection (b)) has determined that the plan should be terminated, it may, upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants and to avoid any further deterioration of the financial condition of the plan or any further increase in the liability of the fund. If the trustee appointed under subsection (b) disagrees with the determination of the corporation under the preceding sentence he may intervene in the proceeding relating to the application for the decree, or make application for such decree himself. Upon granting a decree for which the corporation or trustee has applied under this subsection the court shall authorize the trustee appointed under subsection (b) (or appoint a trustee if one has not been appointed under such subsection and authorize him) to terminate the plan in accordance with the provisions of this subtitle. If the corporation and the plan administrator agree that a plan should be terminated and agree to the appointment of a trustee without proceeding in accordance with the requirements of this subsection (other than this sentence) the trustee shall have the power described in subsection (d)(1) and, in addition to any other duties imposed on the trustee under law or by agreement between the corporation and the plan administrator, the trustee is subject to the duties described in subsection (d)(3). Whenever a trustee appointed under this title is operating a plan with discretion as to the date upon which final distribution of the assets is to be commenced, the trustee shall notify the corporation at least 10 days before the date on which he proposes to commence such distribution.

(d)(1)(A) A trustee appointed under subsection (b) shall have the power—

(i) to do any act authorized by the plan or this title to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee;

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan, regulations of the corporation, and applicable rules of law;

(iv) to limit payment of benefits under the plan to basic benefits or to continue payment of some or all of the benefits which were being paid prior to his appointment; and

(v) to do such other acts as he deems necessary to continue operation of the plan without increasing the potential liability of the corporation, if such acts may be done under the provisions of the plan.

If the court to which application is made under subsection (c) dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) within 30 days after the date on which the trustee is appointed under subsection (b), the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct, or for conduct in violation of the provisions of part 4 of subpart B of title I of this Act (except as provided in subsection (d)(1)(A)(v)). The 30-day period referred to in this subparagraph may be extended as provided by agreement between the plan administrator and the corporation or by court order obtained by the corporation.

(B) If the court to which an application is made under subsection (c) issues the decree requested in such application, in addition to the powers described in subparagraph (A), the trustee shall have the power—

(i) to pay benefits under the plan in accordance with the allocation requirements of section 4044;

(ii) to collect for the plan any amounts due the plan;

(iii) to receive any payment made by the corporation to the plan under this title;

(iv) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan, except to the extent that the corporation is an adverse party in a suit or proceeding;

(v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court;

(vi) to liquidate the plan assets;

(vii) to recover payments under section 4045(a); and

(viii) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries.

(2) As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this title to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term "interested party" means—

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant, and

(C) each employer who may be subject to liability under section 4062, 4063, or 4064.

(3) Except to the extent inconsistent with the provisions of this Act, or as may be otherwise ordered by the court, a trustee appointed under this section shall be subject to the same duties as a trustee appointed under section 47 of the Bankruptcy Act, and shall be, with respect to the plan, a fiduciary within the meaning of paragraph (21)

of section 3 of this Act and under section 4975(e) of the Internal Revenue Code of 1954 (except to the extent that the provisions of this title are inconsistent with the requirements applicable under part 4 of subtitle B of title I of this Act and of such section 4975).

(e) An application by the corporation under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act. Pending an adjudication under subsection (c) such court shall stay, and upon appointment by it of a trustee, as provided in this section such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

(g) An action under this subsection may be brought in the judicial district where the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

(h)(1) The amount of compensation paid to each trustee appointed under the provisions of this title shall require the prior approval of the corporation, and, in the case of a trustee appointed by a court, the consent of that court.

(2) Trustees shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel in accordance with regulations prescribed by the corporation.

REPORTABLE EVENTS

Sec. 4043. (a) Within 30 days after the plan administrator knows or has reason to know that a reportable event described in subsection (b) has occurred, he shall notify the corporation that such event has occurred. The corporation is authorized to waive the requirement of the preceding sentence with respect to any or all reportable events with respect to any plan, and to require the notification to be made by including the event in the annual report made by the plan. Whenever an employer making contributions under a plan to which section 4021 applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.

(b) For purposes of this section a reportable event occurs—

(1) when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2), or

when the Secretary of Labor determines the plan is not in compliance with title I of this Act;

(2) when an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased;

(3) when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year;

(4) when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of the Internal Revenue Code of 1954, but the occurrence of such a termination or partial termination does not, by itself, constitute or require a termination of a plan under this title;

(5) when the plan fails to meet the minimum funding standards under section 412 of such Code (without regard to whether the plan is a plan described in section 4021(a)(2) of this Act) or under section 302 of this Act;

(6) when the plan is unable to pay benefits thereunder when due;

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section 4022(b)(6) if—

(A) such distribution has a value of $10,000 or more;

(B) such distribution is not made by reason of the death of the participant; and

(C) immediately after the distribution, the plan has nonforfeitable benefits which are not funded;

(8) when a plan merges, consolidates, or transfers its assets under section 208 of this Act, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 110 of this Act; or

(9) when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.

For purposes of paragraph (7), all distributions to a participant within any 24 month period are treated as a single distribution.

(c) The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

(d) The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (5), or (8) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

ALLOCATION OF ASSETS

Sec. 4044. (a) In the case of the termination of a defined benefit plan, the plan administrator shall allocate the assets of the plan (avail-

able to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) First, to that portion of each individual's accrued benefit which is derived from the participant's contributions to the plan which were not mandatory contributions.

(2) Second, to that portion of each individual's accrued benefit which is derived from the participant's mandatory contributions.

(3) Third, in the case of benefits payable as an annuity—

(A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least,

(B) in the case of a participant's or beneficiary's benefit (other than a benefit described in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(4) Fourth—

(A) to all other benefits (if any) of individuals under the plan guaranteed under this title (determined without regard to section 4022(b)(5)), and

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 4022(b)(6) did not apply.

For purposes of this paragraph, section 4021 shall be applied without regard to subsection (c) thereof.

(5) Fifth, to all other nonforfeitable benefits under the plan.

(6) Sixth, to all other benefits under the plan.

(b) For purposes of subsection (a)—

(1) The amount allocated under any paragraph of subsection (a) with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of subsection (a).

(2) If the assets available for allocation under any paragraph of subsection (a) (other than paragraphs (5) and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

(A) If this paragraph applies, except as provided in subparagraph (B), the assets shall be allocated to the benefits of individuals described in such paragraph (5) on the basis of the benefits of individuals which would have been described in such paragraph (5) under the plan as in effect at the beginning of the 5-year period ending on the date of plan termination.

(B) If the assets available for allocation under subparagraph (A) are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph (A), benefits of individuals described in such subparagraph shall be determined on the basis of the plan as amended by the most recent plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph (A) and any assets remaining to be allocated under such subparagraph shall be allocated under subparagraph (A) on the basis of the plan as amended by the next succeeding plan amendment effective during such period.

(4) If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1954 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a), 403(a), or 405(a) of such Code, the assets allocated under subsection (a)(4)(B), (a)(5), and (a)(6) shall be reallocated to the extent necessary to avoid such discrimination.

(5) The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

(6) A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) in accordance with regulations prescribed by the corporation.

(c) Any increase or decrease in the value of the assets of a plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 4042(b) or (2) the date on which the plan is terminated is to be allocated between the plan and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator in any other case. Any increase or decrease in the value

of the assets of a plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation.

(d)(1) Any residual assets of a plan may be distributed to the employer if—

(A) all liabilities of the plan to participants and their beneficiaries have been satisfied,

(B) the distribution does not contravene any provision of law, and

(C) the plan provides for such a distribution in these circumstances.

(2) Notwithstanding the provisions of paragraph (1), if any assets of the plan attributable to employee contributions remain after all liabilities of the plan to participants and their beneficiaries have been satisfied, such assets shall be equitably distributed to the employees who made such contributions (or their beneficiaries) in accordance with their rate of contributions.

RECAPTURE OF CERTAIN PAYMENTS

Sec. 4045. (a) Except as provided in subsection (c), the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b)) of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated.

(b) For purposes of subsection (a) the recoverable amount is the excess of the amount determined under paragraph (1) over the amount determined under paragraph(2).

(1) The amount determined under this paragraph is the sum of the amount of the actual payments received by the participant within thet 3-year period.

(2) The amount determined under this paragraph is the sum of—

(A) the sum of the amount such participant would have received during each consecutive 12-month period within the 3 years if the participant received the benefit in the form described in paragraph (3),

(B) the sum for each of the consecutive 12-month periods of the lesser of—

(i) the excess, if any, of $10,000 over the benefit in the form described in paragraph (3), or

(ii) the excess of the actual payment, if any, over the benefit in the form described in paragraph (3), and

(C) the present value at the time of termination of the participant's future benefits guaranteed under this title as if the benefits commenced in the form described in paragraph (3).

(3) The form of benefit for purposes of this subsection shall be the monthly benefit the participant would have received during the consecutive 12-month period, if he had elected at the time of the first payment made during the 3-year period, to receive his interest in the plan as a monthly benefit in the form of a life annuity commencing at the time of such first payment.

(c)(1) In the event of a distribution described in section 4043(b)(7) the 3-year period referred to in subsection (b) shall not end sooner than the date on which the corporation is notified of the distribution.

(2) The trustee shall not recover any payment made from a plan after or on account of the death of a participant, or to a participant who is disabled (within the meaning of section 72(m)(7) of the Internal Revenue Code of 1954).

(3) The corporation is authorized to waive, in whole or in part, the recovery of any amount which the trustee is authorized to recover for the benefit of a plan under this section in any case in which it determines that substantial economic hardship would result to the participant or his beneficiaries from whom such amount is recoverable.

REPORTS TO TRUSTEE

SEC. 4046. The corporation and the plan administrator of any plan to be terminated under this subtitle shall furnish to the trustee such information as the corporation or the plan administrator has and, to the extent practicable, can obtain regarding—

(1) the amount of benefits payable with respect to each participant under a plan to be terminated,

(2) the amount of benefits guaranteed under section 4022 which are payable with respect to each participant in the plan,

(3) the present value, as of the time of termination, of the aggregate amount of benefits payable under section 4022 (determined without regard to section 4022(b)(5)),

(4) the fair market value of the assets of the plan at the time of termination,

(5) the computations under section 4044, and all actuarial assumptions under which the items described in paragraphs (1) through (4) were computed, and

(6) any other information with respect to the plan the trustee may require in order to terminate the plan.

RESTORATION OF PLANS

SEC. 4047. Whenever the corporation determines that a plan which is to be terminated, or which is in the process of being terminated, under this subtitle should not be terminated as a result of such circumstances as the corporation determines to be relevant, the corporation is authorized to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated. In the case of a plan which has been terminated under section 4042 the corporation is authorized in any such case in which the corporation determines such action to be appropriate and consistent with its duties under this title, to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator control of part or all of the remaining assets and liabilities of the plan.

DATE OF TERMINATION

Sec. 4048. For purposes of this title the date of termination is—

(1) in the case of a plan terminated in accordance with the provisions of section 4041, the date established by the plan administrator and agreed to by the corporation,

(2) in the case of a plan terminated in accordance with the provisions of section 4042, the date established by the corporation and agreed to by the plan administrator, or

(3) in the case of a plan terminated in accordance with the provisions of either section in any case in which no agreement is reached between the plan administrator and the corporation (or the trustee), the date established by the court.

Subtitle D—Liability

AMOUNTS PAYABLE BY THE CORPORATION

Sec. 4061. The corporation shall pay benefits under a plan terminated under this title subject to the limitations and requirements of subtitle C of this title. Amounts guaranteed by the corporation under section 4022 shall be paid by the corporation out of the appropriate fund.

LIABILITY OF EMPLOYER

Sec. 4062. (a) This section applies to any employer who maintained a plan (other than a multiemployer plan) at the time it was terminated, but does not apply—

(1) to an employer who maintained a plan with respect to which he paid the annual premium described in section 4006(a)(2)(B) for each of the 5 plan years immediately preceding the plan year during which the plan terminated unless the conditions imposed by the corporation on the payment of coverage under section 4023 do not permit such coverage to apply under the circumstances, or

(2) to the extent of any liability arising out of the insolvency of an insurance company with respect to an insurance contract.

(b) Any employer to which this section applies shall be liable to the corporation, in an amount equal to the lesser of—

(1) the excess of—

(A) the current value of the plan's benefits guaranteed under this title on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section.

(c) For purposes of subsection (b)(2) the net worth of an employer is—

(1) determined on whatever basis best reflects, in the determination of the corporation, the current status of the employer's oper-

ations and prospects at the time chosen for determining the net worth of the employer, and

(2) increased by the amount of any transfers of assets made by the employer determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under the Bankruptcy Act if the employer were the subject of a proceeding under that Act.

(d) For purposes of this section the following rules apply in the case of certain corporate reorganizations.

(1) If an employer ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the employer to whom this section applies.

(2) If an employer ceases to exist by reason of a liquidation into a parent corporation, the parent corporation shall be treated as the employer to whom this section applies.

(3) If an employer ceases to exist by reason of a merger or, consolidation, or division, the successor corporation or corporations shall be treated as the employer to whom this section applies.

(e) If an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment, the employer shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 4063, 4064, and 4065 shall apply.

LIABILITY OF SUBSTANTIAL EMPLOYER FOR WITHDRAWAL

SEC. 4063. (a) Except as provided in subsection (d), the plan administrator of a plan under which more than one employer makes contributions—

(1) shall notify the corporation of the withdrawal of a substantial employer from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of such employer under this subtitle with respect to such withdrawal.

The corporation shall, as soon as practicable thereafter, determine whether such employer is liable for any amount under this subtitle with respect to the withdrawal and notify such employer of such liability.

(b) Except as provided in subsection (c), an employer who withdraws from a plan to which section 4021 applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a), shall be liable to the corporation in accordance with the provisions of section 4062 and this section. The amount of such employer's liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 4062 for the entire plan, as if the plan had been

terminated by the corporation on the date of the employer's withdrawal, multiplied by a fraction—

(1) the numerator of which is the total amount required to be contributed to the plan by such employer for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount required to be contributed to the plan by all employers for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions of paragraphs (2) and (3) of subsection (c).

(c)(1) In lieu of payment of his liability under this section the employer may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 6 through 13 of title 6, United States Code. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated within the 5-year period commencing on the day of withdrawal the liability of such employer is abated and any payment held in escrow shall be refunded without interest to the employer (or his bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the employer which is not required to meet any obligation of the corporation with respect to the law.

(d) The provisions of this subsection apply in the case of a withdrawal described in subsection (a), and the provisions of subsections (b) and (c) shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 4064 and is more appropriate in the particular case. Upon a showing by the plan administrator of a plan that the withdrawal from the plan by any employer or employers has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan by employers, the corporation may—

(1) require the plan fund to be equitably allocated between those participants no longer working in covered service under the plan as a result of their employer's withdrawal, and those participants who remain in covered service under the plan;

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(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a termination; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) The corporations is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section to any employer or plan administrator whenever it determines that there is an indemnity agreement in effect among all other employers under the plan which is adequate to satisfy the purposes of this section and of section 4064.

LIABILITY OF EMPLOYERS ON TERMINATION OF PLAN MAINTAINED BY MORE THAN ONE EMPLOYER

SEC. 4064. (a) This section applies to all employers who maintain a plan under which more than one employer makes contributions at the time such plan is terminated, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan.

(b) The corporation shall determine the liability of each such employer in a manner consistent with section 4062 except that the amount of the liability determined under section 4062(b)(1) with respect to the entire plan shall be allocated to each employer by multiplying such amounts by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan by each employer for the last 5 plan years ending prior to the termination, and

(2) the denominator of which is the total amount required to be contributed to the plan by all such employers for such last 5 years.

and the limitation described in section 4062(b)(2) shall be applied separately to each employer. The corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations.

ANNUAL REPORT OF PLAN ADMINISTRATOR

SEC. 4065. For each plan year for which section 4021 applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

(1) a copy of each notification required under section 4063 with respect to such year, and

(2) a statement disclosing whether any reportable event (described in section 4043(b)) occurred during the plan year.

The report shall be filed within 6 months after the close of the plan year to which it relates. The corporation shall cooperate with the Secretary of the Treasury and the Secretary of Labor in an endeavor to coordinate the timing and content, and possibly obtain the combination, of reports under this section with reports required to be made by plan administrators to such Secretaries.

ANNUAL NOTIFICATION TO SUBSTANTIAL EMPLOYERS

Sec. 4066. The plan administrator of each plan under which contributions are made by more than one employer shall notify, within 6 months after the close of each plan year, any employer making contributions under that plan who is described in section 4001(a)(2) that he is a substantial employer for that year.

RECOVERY OF EMPLOYER LIABILITY FOR PLAN TERMINATION

Sec. 4067. The corporation is authorized to make arrangements with employers who are liable under section 4062, 4063, or 4064 for payment of their liability, including arrangements for deferred payment on such terms and for such periods as the corporation deems equitable and appropriate.

LIEN FOR LIABILITY OF EMPLOYER

Sec. 4068. (a) If any employer or employers liable to the corporation under section 4062, 4063, or 4064 neglect or refuse to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation upon all property and rights to property, whether real or personal, belonging to such employer or employers.

(b) The lien imposed by subsection (a) arises—

(1) on the later of—

(A) the date on which a trustee is appointed under section 4042(b), or

(B) the date on which application is made for a decree under section 4042(c), or

(2) on the date agreed upon by the corporation and the plan as the date of termination in the case of a voluntary termination.

The lien shall continue until the liability imposed under section 4062, 4063, or 4064 is satisfied or becomes unenforceable by reason of lapse of time.

(c)(1) Except as otherwise provided under this section, the priority of the lien imposed under subsection (a) shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. Such section 6323 shall be applied by substituting "lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974" for "lien imposed by section 6321"; "corporation" for "Secretary or his delegate"; "employer liability lien" for "tax lien"; "employer" for "taxpayer: "lien arising under section 4068(a) of the Employee Retirement Income Security Act of 1974" for "assessment of the tax"; and "payment of the loan value is made to the corporation" for "satisfaction of a levy pursuant to section 6332(b)"; each place such terms appear.

(2) In the case of bankruptcy or insolvency proceedings, the lien imposed under subsection (a) shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

(3) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under subsection (a) and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) shall be filed in the same manner as under section 6323 (f) and (g) of the Internal Revenue Code of 1954.

(d) (1) In any case where there has been a refusal or neglect to pay the liability imposed under section 4062, 4063, or 4064, the corporation may bring civil action in a district court of the United States to enforce the lien of the corporation under this section with respect to such liability or to subject any property, of whatever nature, of the employer, or in which he has any right, title, or interest to the payment of such liability.

(2) The liability imposed by section 4062, 4063, or 4064 may be collected by a proceeding in court if the proceeding is commenced within 6 years after the date upon which the plan was terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the employer before the expiration of such 6-year period. The period of limitations provided under this paragraph shall be suspended for the period the assets of the employer are in the control or custody of any court of the United States, or of any State, or of the District of Columbia, and for 6 months thereafter, and for any period during which the employer is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) If the corporation determines, with the consent of the board of directors, that release of the lien or subordination of the lien to any other creditor of the employer or employers would not adversely affect the collection of the liability imposed under section 4062, 4063, or 4064, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such release or subordination, and that the ultimate collection of the liability will be facilitated by such release or subordination, the corporation may is ue a certificate of release or subordination of the lien with respect to such property, or any part thereof.

Subtitle E—Amendments to Internal Revenue Code of 1954: Effective Dates

AMENDMENTS TO INTERNAL REVENUE CODE OF 1954

Sec. 4081. (a) Section 404 of the Internal Revenue Code of 1954 (relating to deduction for contributions of an employer to employees' trust or annuity plan in compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection:

"(G) Certain Employer Liability Payments Considered as Contributions.—For purposes of this section any amount paid by an employer under section 4062, 4036, or 4064 of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.".

(b) Section 6511(d) of the Internal Revenue Code of 1954 (relating to special rules applicable to income taxes) is amended by adding at the end thereof the following new paragraph:

"(8) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO AMOUNTS INCLUDED IN INCOME SUBSEQUENTLY RECAPTURED UNDER QUALIFIED PLAN TERMINATION.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.".

EFFECTIVE DATE; SPECIAL RULES

SEC. 4082. (a) The provisions of this title take effect on the date of enactment of this Act.

(b) Notwithstanding the provisions of subsection (a), the corporation shall pay benefits guaranteed under this title with respect to any plan—

(1) which is not a multiemployer plan,

(2) which terminates after June 30, 1974, and before the date of enactment of this Act,

(3) to which section 4021 would apply if that section were effective beginning on July 1, 1974, and

(4) with respect to which a notice is filed with the Secretary of Labor and received by him not later than 10 days after the date of enactment of this Act, except that, for reasonable cause shown, such notice may be filed with the Secretary of Labor and received by him not later than October 31, 1974, stating that the plan is a plan described in paragraphs (1), (2), and (3).

The corporation shall not pay benefits guaranteed under this title with respect to a plan described in the preceding sentence if the corporation finds that the plan was terminated for the purpose (whether or not the primary purpose) of obtaining the payment of such benefits by the corporation, avoiding the liability which would be imposed under subtitle D if the plan terminated on or after the date of enactment of this Act, or for both such purposes. The provisions of subtitle D do not apply in the case of such plan which terminates before the date of enactment of this Act. For purposes of determining whether a plan is a plan described in paragraph (2), the provisions of section 4048 shall not apply, but the corporation shall make the determination on the basis of the date on which benefits ceased to accrue or on any other reasonable basis consistent with the purposes of this subsection.

(c)(1) Except as provided in paragraphs (2), (3), and (4), the corporation shall not pay benefits guaranteed under this title with respect to a multiemployer plan which terminates before January 1, 1978. Whenever the corporation exercises the authority granted under paragraph (2) or (3), the corporation shall notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Labor and Public Welfare and the Committee on Finance of the Senate.

(2) The corporation may, in its discretion, pay benefits guaranteed under this title with respect to a multiemployer plan which terminates after the date of enactment of this Act and before January 1, 1978, if—

(A) the plan was maintained during the 60 months immediately preceding the date on which the plan terminates, and

(B) the corporation determines that the payment by the corporation of benefits guaranteed under this title with respect to that plan will not jeopardize the payments the corporation anticipates it may be required to make in connection with benefits guaranteed under this title with respect to multiemployer plans which terminate after December 31, 1977.

(3) Notwithstanding any provision of section 4021 or 4022 which would prevent such payments, the corporation, in carrying out its authority under paragraph (2), may pay benefits guaranteed under this title with respect to a multiemployer plan described in paragraph (2) in any case in which those benefits would otherwise not be payable if—

(A) the plan has been in effect for at least 5 years,

(B) the plan has been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding 5 years, and

(C) the participating employers and employee organization or organizations had no reasonable recourse other than termination.

(4) If the corporation determines, under paragraph (2) or (3), that it will pay benefits guaranteed under this title with respect to a multiemployer plan which terminates before January 1, 1978, the corporation—

(A) may establish requirements for the continuation of payments which commenced before January 2, 1974, with respect to retired participants under the plan,

(B) may not, notwithstanding any other provision of this title, make payments with respect to any participant under such a plan who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to such participant on that date,

(C) may not make any payments with respect to benefits guaranteed under this title in connection with such a plan which are derived, directly or indirectly, from amounts borrowed under section 4005(c), and

(D) shall review from time to time payments made under the authority granted to it by paragraphs (2) and (3), and reduce or terminate such payments to the extent necessary to avoid jeopardizing the ability of the corporation to make payments of benefits guaranteed under this title in connection with multiemployer plans which terminate after December 31, 1977, without increasing premium rates for such plans.

And the Senate agree to the same.

CARL D. PERKINS,
FRANK THOMPSON,
JOHN H. DENT,
PHILLIP BURTON,
ALBERT H. QUIE,
JOHN N. ERLENBORN,
RONALD SARASIN,
Managers on the Part of the House as to Title I of the House Bill.

AL ULLMAN,
JAMES A. BURKE of Massachusetts,
MARTHA W. GRIFFITHS,
DAN ROSTENKOWSKI,
H. T. SCHNEEBELI,
HAROLD R. COLLIER,
JOEL BROYHILL of Virginia,
Managers on the Part of the House as to Title II of the House Bill.

RUSSELL LONG,
HARRISON WILLIAMS,
JENNINGS RANDOLPH,
GAYLORD NELSON,
LLOYD BENTSEN,
J. K. JAVITS,
RICHARD SCHWEIKER,
WALLACE BENNETT,
CARL T. CURTIS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2) to provide for pension reform, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute amendment. The conference has agreed to a substitute for both the Senate amendment and the House bill. The statement following the table of contents explains the principal differences between the substitute agreed to in conference and the House and Senate bills.

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I. Reporting and Disclosure (Secs. 101–111 of the Bill)

The House bill requires annual reporting of detailed financial and actuarial data and comprehensive plan descriptions to the Secretary of Labor, and disclosure of more limited data to the participants. The financial and actuarial data filed with the Secretary of Labor are required to be in the form of a conventional audited financial statement prepared by a qualified accountant and a certified actuarial statement prepared by an enrolled actuary.

The Senate bill requires submission of comparable financial and actuarial data and plan descriptions to both the Secretary of Labor and participants. Like the House bill, actuarial data is required to be certified by an enrolled actuary. Unlike the House bill, all reports were required to be submitted on forms promulgated by the Secretary. The conference substitute is described below. In general, the substitute combines the rules of both the House and Senate bill.

The conference substitute adopts the reporting format contained in both the House and Senate bills. Each plan (unless exempted) is to be required to report annually to the Secretary of Labor certain financial and actuarial data. In addition to these reports, each plan will be required to have prepared an audited financial statement and defined benefit plans must have a certified actuarial report. Special reports are also required at the time of plan terminations.

The Secretary of Labor is given the authority to prescribe forms for reports to him (other than the audited financial statement and certified actuarial report) paralleling similar authority already available to the Secretary of Treasury. The two Secretaries are to unify, to the extent feasible, the reports made to them and it is expected that all of the material subject to the form authority of either Secretary, comprising the annual reports to be made by a plan, can and should be reported on a single form.

Plans subject to the provisions and exemptions

Under the conference substitute, the new reporting and disclosure requirements are to be administered by the Secretary of Labor and are to be applied to all pension and welfare plans established or maintained by an employer or employee organization engaged in, or affecting, interstate commerce. Governmental plans, certain church plans, workmen's compensation and unemployment compensation plans, plans maintained outside the United States for the benefit of persons substantially all of whom are nonresident aliens, and so-called excess benefit plans, which provide benefits in addition to those for which

deductions may be taken under the tax laws, are exempted from the requirements. The Secretary of Labor also is authorized to waive and modify certain of these requirements for employee benefit plans.

All plans of the types subject to the reporting and disclosure provisions are to be required to file an annual report with the Secretary of Labor regardless of the number of participants involved. However, simplified reports may be authorized for plans with fewer than 100 participants.

Contents of annual report

The annual report generally is to include audited financial statements for both welfare plans and pension plans. With respect to welfare plans the statement is to include a statement of assets and liabilities, a statement of changes in fund balance, and a statement of changes in financial position. With respect to employee pension plans the statement is to include a statement of assets and liabilities and a statement of changes in net assets available for plan benefits, including details as to revenues and expenses and other changes aggregated by general source and application.

In the notes to the annual financial statement, the accountant is to disclose any significant changes in the plan, material lease commitments and contingent liabilities, any agreements and transactions with persons known to be parties-in-interest, information as to whether a tax ruling or determination letter has been obtained, and any other relevant matters necessary to fairly present the financial status of the plan. In addition, in the case of employee pension plans the notes should also deal with funding policy (including policy with respect to prior service costs and changes in such policies during the year). An accountant may rely on the correctness of any actuarial matter certified by any enrolled actuary if the accountant indicates his reliance on such certification.

In addition to the audited financial statement, the annual report is to include for all employee benefit plans a statement on separate schedules showing among other things, a statement of plan assets and liabilities aggregated by categories, a statement of receipts and disbursements, a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessee and a schedule of each transaction involving a person known to be a party-in-interest. Also, a schedule of all loans and leases in default at the end of the year or which are classified during the year as uncollectible is to be included in the annual report.

There is also to be supplied with the annual report a schedule listing each transaction which exceeds 3 percent of the value of the fund. If some or all of the assets of a plan are held in a common or collective trust maintained by a bank or similar institution the annual report is to include the most recent annual statement of assets and liabilities of the common or collective trust. (The Secretary of Labor will have authority to prescribe for the filing of a master copy of the annual

statement of this common or collective trust in order to avoid duplicative filings of this statement by plans participating in this common or collective trust.)

With respect to persons employed by the plan the annual report is to include the name and address of each fiduciary, the name of each person who receives more than minimal compensation from the plan for services rendered, along with the amount of compensation (or who performs duties which are not ministerial), the nature of the services, and the relationship to the employer or any other party in interest to the plan. Also, the reasons for any changes in trustees, accountant, actuary, investment manager, or administrator are to be provided in the annual report.

As indicated in the discussion of the funding provisions, under the conference agreement, the annual report is to include an actuarial statement for all pension plans which are subject to the funding requirements of title I. If plan benefits are purchased from, and guaranteed by, an insurance company, the annual report is to include the premiums paid, benefits paid, charges for administrative expenses, commissions and other information. The insurance carrier is to certify to the plan administrator the information needed to comply with the annual reporting requirements within 120 days after the close of the plan year, or within such other period as is prescribed by the Secretary of Labor.

The annual report for a plan is to be filed within 210 days after the close of the plan year or within such period of time as the Secretary of Labor may require in order to reduce the necessity for duplicate filing with the Internal Revenue Service. The Secretary of Labor may reject the filing of an annual report if he finds that it is incomplete or there is a material qualification in the accountant's or actuary's opinion. If a revised report is not submitted within 45 days after rejection, the Secretary may retain an accountant to perform an audit, or retain an actuary, whichever is appropriate, or bring a civil action for legal or equitable relief. The plan is to bear the costs of any expenses of an audit or actuarial report.

Accountant and actuary reports

Every plan is to retain on behalf of its participants an independent qualified public accountant who annually is to prepare an audited financial statement of the plan's operations. The accountant is to give an opinion as to whether the financial statements of the plan conform with generally accepted accounting principles and the statement is to be based upon an examination in accordance with generally accepted auditing standards. An accountant's opinion is not to be required for statements prepared by banks or similar institutions or an insurance carrier if the statements of the bank or insurance carrier are certified by the bank and are made part of an annual report. For purposes of this provision a qualified public accountant includes certified public accountants, licensed public accountants and any person certified by

the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in a State where there is no certification or licensing procedure for accountants. Further, to the extent a plan is not required to make an annual report to the Secretary of Labor an annual audit is not required (and an independent, qualified public accountant need not be retained). Also the Secretary of Labor may waive the requirement of an audited financial statement in cases where simplified annual reports are permitted to be filed.

Every plan subject to the funding requirements of title I must retain an enrolled actuary who is to prepare an actuarial statement on an annual basis. This statement is to show the present value of all plan liabilities for nonforfeitable pension benefits allocated by the termination priority categories. The actuary is to supply a statement to be filed with the annual report as to his opinion as to whether the actuarial statements of the plan are reasonably related to the experience of the plan and to the reasonable expectations of the plan. The actuary is to use assumptions and techniques as are necessary to form an opinion as to whether the contents of the matters upon which he reports are in the aggregate reasonably related to the experience of the plan and to reasonable expectations, and represent his best estimate of anticipated experience under the plan. The actuarial statement is not required for plans which need not file annual reports, and may be waived by the Secretary of Labor for plans for which simplified annual reports are allowed.

Reports on termination

In addition to the annual reports which must be filed with the Secretary of Labor, special terminal reports are required to be filed for pension plans that are winding up their affairs. These terminal reports may also be required by the Secretary of Labor for welfare plans. Also in the year a plan is terminated the Secretary may require the supplementary information to be filed with the annual report.

Disclosure to participants

Each administrator of an employee benefit plan is to furnish to each participant and to each beneficiary a summary plan description written in a manner calculated to be understood by the average plan participant or beneficiary. The summary is to include important plan provisions, names and addresses of persons responsible for plan investment or management, a description of benefits, the circumstances that may result in disqualification or ineligibility and the procedures to be followed in presenting claims for benefits under the plan.

Summary plan descriptions are to be furnished to participants within the later of 120 days after the plan is established or 90 days after an individual becomes a participant. Updated plan descriptions are also to be provided to participants every five years thereafter where there have been plan amendments in the interim; in any case, a

new description is to be is to be provided every ten years. Also, participants are to receive descriptions of material changes in a plan within 210 days after the end of any plan year in which a material change occurs. Also, the annual report and plan documents are to be available for examination by participants or beneficiaries at the principal office of the plan administrator and such other places as is necessary to provide reasonable access to these reports and documents. Thus, if the participants covered under the plan are employed in more than one geographic area, each geographic area is to have available for examination the required documents. Each participant is also to be furnished a copy within 210 days after the close of the plan year of the schedule of plan assets and liabilities and receipts and disbursements as submitted with the annual report, including any other material which is necessary to thoroughly summarize the latest annual report. Upon a written request, a plan administrator is to furnish a participant or beneficiary a complete copy of the comprehensive plan description, the latest annual report and other instruments under which the plan is established and operated. The plan administrator may charge a reasonable amount for fulfilling such a request.

Upon the request of a plan participant or beneficiary, a plan administrator is to furnish on the basis of the latest available information the total benefits accrued and the nonforfeitable pension benefit rights, if any, which have accrued. No more than one request may be made by any participant or beneficiary for this information during any one 12-month period.

A copy of the statement of the deferred vested benefits in the plan for individuals who have terminated employment during a plan year which is furnished to the Social Security Administration also is to be furnished to the individual participant.

Reports made public information

The contents of the descriptions of plans and reports filed with the Secretary of Labor are to be public information and are to be available for inspection in the Department of Labor. In addition, the Secretary of Labor may use the information and data for statistical and research purposes and for the compiling and publishing of studies as he may deem appropriate. However, information with respect to a plan participant's accrued benefits and nonforfeitable pension rights is to be disclosed only to the extent that information respecting a participant's benefits for old age retirement insurance may be disclosed under the Social Security Act.

Forms to be provided

The Secretary of Labor may require that any information required to be filed with the Labor Department, including statements and schedules attached to the annual report, must be submitted on forms that he may prescribe. The financial statement prepared by the independent qualified accountant and the actuarial statement prepared by the enrolled actuary and the summary of the plan description are not re-

quired to be submitted on forms. However, the Secretary may prescribe the format and content of the accountant's and actuary's statements and of the summary plan description, the summary annual report, and other statements or reports required under title I to be furnished or made available to participants and beneficiaries.

Effective dates

The conference agreement provides that the reporting and disclosure provisions generally are to take effect on January 1, 1975. However, in the case of a fiscal year plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary of Labor may by regulation postpone the effective date until the beginning of the first plan year of the plan which begins after January 1, 1975.

II. Participation and Coverage (Secs. 201, 202, and 1011 of the Bill and Secs. 401 and 410 of the Internal Revenue Code)

The House bill provides that an employee cannot be excluded from a plan on account of age or service if the employee is at least 25 years old and has had at least one year of service, or, if he has three years of service, the employee cannot be excluded even though he is not yet 25. The 1-year service requirement (for employees 25 and older) may be extended to 3 years if the plan provides full and immediate vesting for all participants. Under the Senate amendment, an employee cannot be excluded on account of age or service if he has attained age 30 with 1 year of service.

The conference substitute is described below. In general, the substitute follows the rules of the House bill in this area with respect to technical matters.

Plans subject to the provisions

Under title I of the conference substitute (the labor law provisions) the new participation and coverage rules are to be enforced by the Secretary of Labor when participants bring violations to his attention or when cases come to his attention which initially were under consideration by the Secretary of Treasury on which he has previously initiated action. The rules are to apply to employee pension benefit plans of employers or employee organizations established in or affecting interstate commerce. Under this title II (the tax law provisions), the participation and coverage rules are to be administered by the Secretary of the Treasury or his delegate, and the rules apply to tax-qualified pension, profit-sharing, and stock bonus plans.[1]

Exceptions to coverage

The participation and coverage requirements of title I (the labor law provisions) do not apply to governmental plans (including Railroad

[1] The division of administrative responsibility between Labor and Treasury is discussed in Part XII. below "General Provisions Relating to Jurisdiction, Administration, Enforcement: Joint Pension Task Force, Etc." Except where otherwise noted, the regulations with respect to participation, vesting and funding are to be written by the Secretary of the Treasury or his delegate.

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Retirement Act plans), church plans (except those electing coverage), plans maintained solely to comply with workmen's unemployment, disability, or compensation laws, plans maintained outside the United States primarily for the benefit of nonresident aliens, employee welfare plans, excess plans (which provide for benefits or contributions in excess of those allowable for tax-qualified plans), unfunded deferred compensation arrangements, plans established by labor organizations (those referred to in sec. 501(c)(5) of the Internal Revenue Code) which do not provide for employer contributions after the date of enactment, and fraternal or other plans of organizations (described in sec. 501(c)(8), 501(c)(9)) which do not receive employer contributions, or trusts described in 501(c)(18) of the Internal Revenue Code. Title I does not apply to buy-out agreements involving retiring or deceased partners (under sec. 736 of the Internal Revenue Code). In addition, title I does not apply to employer or union-sponsored individual retirement accounts (see "Employee Savings for Retirement").

The participation requirements of title II apply only to plans which qualify for certain tax deferral privileges by meeting the standards as to participation and other matters set forth in the Internal Revenue laws. However, governmental plans and church plans which do not elect to come under the new provisions will nevertheless be treated as qualified for purposes of the tax deferral privileges for the employees, if they meet the requirements of present law. Also the rules do not apply to plans of labor organizations (described in sec. 501(c)(5)) or fraternal or other organizations (described in sec. 501(c) (8) or (9)) which do not provide for employer contributions.

Exemption for church plans

As indicated above, both title I and title II exempt church plans from the participation and coverage requirements of the conference substitute (although title II requires these plans to comply with present law in order to be qualified). This exemption does not apply to a plan which is primarily for the benefit of employees engaged in an unrelated trade or business, or (except as noted below) to a multiemployer plan unless all of the participating employers are churches or conventions or associations of churches (rather than merely church-related agencies). However, a multiemployer plan which was in existence on January 1, 1974, and which covers church-related agencies (such as schools and hospitals) is to be treated as a church plan for purposes of the exemption (even though it continues to cover those agencies) for plan years beginning before January 1, 1983, but not for subsequent plan years.

A church plan may make an irrevocable election to be covered under title I and title II (in a form and manner to be prescribed in regulations). A plan which makes this election is to be covered under the bill for purposes of the new participation, vesting, funding and form of benefit rules, as well as the fiduciary and disclosure rules and will also be covered under the plan termination insurance provisions.

General rule as to participation

Generally, under title I and title II of the conference substitute, an employee cannot be excluded from a plan on account of age or service if he is at least 25 years old and has had at least one year of service. However, if the plan provides full and immediate vesting for all participants, it may require employees to be age 25, with 3 years of service, in order to participate. As an alternative, any plan which is maintained exclusively for employees of a governmental or tax-exempt educational organization which provides full and immediate vesting for all participants may have a participation requirement of age 30, with 1 year of service.

Maximum age requirement

Under the conference substitute, in general, a plan may not exclude an employee because he is too old. However, because of cost factors, it was decided that in a defined benefit plan it would be appropriate to permit the exclusion of an employee who is within 5 years of attaining normal retirement age under the plan (or older) when he is first employed. (These employees would be counted as part of the employer's work force, however, for purposes of determining whether or not his plan satisfied the breadth-of-coverage requirements.) Of course, if a plan defines normal retirement age as the later of age 65, or the tenth anniversary of the employee's participation in the plan, the plan could not impose a maximum age requirement (because no employee would be within 5 years of normal retirement age when first employed). A "target benefit" plan, as defined in Treasury regulations, could also impose a maximum age requirement (even though it is not a defined benefit plan), because in many respects the pattern of costs and benefits of target benefit plans closely resembles the pattern of costs and benefits of defined benefit plans.

Year of service defined

Under the conference substitute, in general, for purposes of the participation requirements, the term "year of service" means a 12-month period during which the employee has worked at least 1,000 hours. This 12-month period is measured from the date when the employee enters service. Thus, the employee has fulfilled his 1,000-hour-requirement if he has 1,000 hours of work by the first anniversary date of his employment. Under the substitute, the employee (if age 25 or older) would then be admitted to the plan within 6 months or his anniversary date of employment or by the beginning of the first plan year following his first anniversary date, whichever occurred earlier. (Of course, this does not mean that an employee would have to be admitted to the plan if he were lawfully excluded for reasons other than age or service.)

The plan would not be required to admit the employee if he had "separated from the service" before the otherwise applicable admission date. In general, "separated from the service" means the employee was

discharged or quit; it does not mean temporary absence due to vacation, sickness, strike, seasonal layoff, etc.

If the employee did not complete 1,000 hours of service by his first anniversary date, but is still employed, he would start over toward meeting his 1,000 hour requirement. For this purpose, the plan could provide (on a consistent basis) that the relevant 12-month period is either (a) the year between his first anniversary date and his second anniversary date, or (b) the first plan year which began after the individual was first employed. For example, assume the plan is on a calendar year basis, and that an employee begins work on July 1, 1976. Between July 1, 1976, and June 30, 1977, the employee has less than 1,000 hours of service. The plan could provide that the employee would be tested the second time for purposes of participation based on the year from July 1, 1977 through June 30, 1978, or based on the year from January 1, 1977 through December 31, 1977 (but not January 1, 1978 through December 31, 1978).

The regulations with respect to "year of service" are to be written by the Secretary of Labor for purposes of participation and vesting. The term "hour of service" will also be defined in Labor Department regulations.

For purposes of participation (and vesting), in the case of any maritime industry (as defined in Labor Department regulations), 125 days of service are to be treated as the equivalent of 1,000 hours of service, but this rule will not apply to other industries.

Seasonal and part-time workers

In general, the 1,000 hour standard is to apply for purposes of determining whether or not an employee may be excluded from the plan as a seasonal or part-time employee (replacing the 5-month year, 20-hour week standard now in the Internal Revenue Code). However, in the case of seasonal industries where the customary period of employment is less than 1,000 hours, the term "year of service" is to be determined in accordance with Labor Department regulations.

Breaks in service

Under the conference substitute, a 1-year break in service occurs in any calendar year, plan year, or other consecutive 12-month period designated by the plan on a consistent basis (and not prohibited under Labor Department regulations) in which the employee has 500 hours of service or less.

The general rule is that all service with the employer (pre-break and post-break) is to be taken into account for purposes of determining whether the employee has met the participation requirements. However, if an employee has a 1-year break in service, the plan may require a 1-year waiting period before reentry, at which point the employee's pre-break and post-break service are to be aggregated, and the employee is to receive full credit for the waiting period service. For example, if the plan is on a calendar year basis, and an employee who has a 1-year

break in service reenters employment on November 1, 1976, works 200 hours in 1976, and 1700 hours by November 1, 1977, the employee under this provision would be considered as reentering the plan for 1977. As a result, his pre-break and post-break service would be aggregated, and he would advance one year on the vesting schedule for 1977. He would also accrue benefits for that year. (Other rules with respect to break-in-service are explained below in connection with vesting and benefit accrual.)

In the case of a plan which has a 3-year service requirement for participation (because the plan provides 100 percent immediate vesting), the plan may provide that employees who have a 1-year break in service before completing their 3-year service requirement must start over toward fulfilling that requirement after the break in service.

Eligibility—collective-bargaining units, air pilots

Title II of the conference substitute provides that employees who are under a collective bargaining agreement can be excluded for purposes of the breadth-of-coverage requirements (coverage for 70 percent of all employees or 80 percent of all eligible employees if at least 70 percent of all employees are eligible to benefit under the plan, or coverage on a nondiscriminatory basis), if the employees are excluded from the plan and there is evidence that retirement benefits have been the subject of good-faith bargaining. However, if the union employees are covered under the plan, benefits or contributions must be provided for them on a nondiscriminatory basis.

Title II of the substitute provides another exception to the breadth-of-coverage rule. It provides that air pilots represented in accordance with the Railway Labor Act may bargain separately for tax-qualified employee plan benefits, without including other workers within the industry (but only in the case of a plan which covers no employees other than air pilots). In addition, the conferees intend that the joint congressional pension task force study group, created under this legislation, study this area to see whether a similar rule should be applied to other unions or professional groups in the future.

Nonresident aliens

Title II of the conference substitute provides that employees who are nonresident aliens with no United States income from the employer in question are to be excluded for purposes of applying the breadth-of-coverage requirements and for purposes of applying the antidiscrimination rules (whether or not they are covered under the plan).

Predecessor employer

Service with a predecessor employer must be counted for purposes of the plan if the successor employer continues to maintain the plan of the predecessor employer (and, of course, the successor employer cannot evade this requirement by nominally discontinuing the plan). The question of the extent to which such service must be counted in other circumstances is to be determined under regulations.

Multiemployer plans

Under the conference substitute, service with any employer who is a member of a multiemployer plan is to be counted for purposes of the plan. The term "multiemployer plan" means a plan maintained pursuant to a collective bargaining agreement, to which more than one employer is required to contribute, and to which no one employer makes as much as 50 percent of the contributions. (This percentage test would become a 75-percent test once the plan qualifies as a multiemployer plan.) Also, the plan must provide that benefits will be payable to each participant, even though his employer subsequently ceases to make contributions under the plan. However, the plan would not be required to provide past service benefits, i.e., benefits for periods before the participant's employer entered the plan. Also, service during a period for which the employer was not a member of the plan would not be required to be counted for participation or vesting purposes.

Additional requirements relating to multiemployer plans may be prescribed in Department of Labor regulations. The conferees intend that a plan not be classified as a multiemployer plan unless it is a collectively bargained plan to which a substantial number of unaffiliated employers are required to contribute. Also, a plan is not to be classified as a multiemployer plan where there is no substantial business purpose in having a multiemployer plan (except to obtain the advantages of multiemployer plan status under this bill).

In addition to employees of employers making contributions to a multiemployer plan, under the conference substitute such a plan may cover employees of labor unions which negotiated the multiemployer plan and employees of the plan itself. For this purpose, the plan would have to satisfy the general breadth-of-coverage and nondiscrimination requirements of the Internal Revenue Code separately with respect to these union or plan employees and collectively (i.e., with respect to all groups of employees covered under the plan), but would not be required to meet the exclusive benefit rules of the tax law. Instead, the exclusive benefit rules would be applied to the beneficiaries of the multiemployer plan as a whole. (Similar treatment for union employees or plan employees would also be available in the case of a single-employer collectively bargained plan.)

H.R. 10 plans

In general, the provisions of present law which allow a 3-year service requirement for participation (but do not allow the plan to impose an age requirement), and require 100 percent immediate vesting, would continue to govern owner-employee H.R. 10 plans (those for sole proprietors and 10 percent owners and their employees). However, certain provisions of this bill, such as the rules with respect to year of service and breaks in service are also to apply for purposes of the H.R. 10 plans.

Affiliated employers

Title II of the conference substitute provides that in applying the breadth-of-coverage and antidiscrimination rules (as well as the vesting rules and the limitations on contributions and benefits), employees of all corporations who are members of a "controlled group of corporations" (within the meaning of sec. 1563(a) of the Internal Revenue Code of 1954) are to be treated as if they were employees of the same corporation. A comparable rule is to be provided in the case of partnerships and proprietorships which are under common control (as determined under regulations). The conferees agree with the interpretation of these provisions, as expressed in the Ways and Means Committee report (No. 93-807).

Effective dates [2]

Under the conference substitute the changes made in the bill with respect to participation and vesting are to apply to new plans in plan years beginning after the date of enactment. For plans in existence on January 1, 1974, the general effective date of these provisions is to be plan years beginning after December 31, 1975.

The general effective date of plan years beginning after December 31, 1975 applies in the case of collectively bargained plans in the same manner as in the case of other plans. However, in order that the opening up of the contract to comply with the requirements of this bill will not require negotiations with respect to other matters, the conference substitute provides that a collective bargaining contract, in existence on January 1, 1974, which does not expire until after the general effective date for existing plans, may be reopened solely for the purpose of allowing the plan to meet the requirements of this bill, without having to be opened for any other purpose. Where it is necessary, as a result of this bill, to modify an employee benefit plan, it is the conferees' understanding that it is not an unfair labor practice under the National Labor Relations Act for a party to a collective bargaining agreement to refuse to bargain regarding matters unrelated to the modification required by this bill, provided this refusal is not otherwise an unfair labor practice. In addition, the changes required to be made in a plan are not themselves to be treated as constituting the expiration of a contract for purposes of any other provisions of this bill which depend on the date of the expiration of a contract.

Finally, the conference substitute provides that if a plan, adopted pursuant to a collective bargaining agreement in effect on January 1, 1974, contains a clause: (1) which provides supplementary benefits which are in the form of a lifetime annuity and refer to not more than one-third of the basic benefit to which the employees generally are entitled; or (2) which provides that a 25-year service employee is to be treated as a 30-year service employee, if that right is granted by

[2] Because of the interrelationship of the effective date provisions for participation and vesting, this discussion deals with the effective dates for both.

a contractual agreement which is based on medical evidence as to the effects of working in an adverse environment for an extended period of time (such as workers in foundries or workers in asbestos plants), then the application of the accrued benefit provision of this bill to those benefits is to be delayed until the expiration of the collective bargaining agreement (but no later than plan years beginning after December 31, 1980). For purposes of applying the effective date rules, the conferees agree with the statements appearing in the paragraph beginning at the bottom of page 51, and in the first full paragraph on page 52 of the Ways and Means Committee report (No. 93-807). This explanation relates to situations where a collective bargaining agreement is to be treated as having terminated, and as to how the effective date rules are to be applied to a plan which includes some employees covered under one or more collective bargaining agreements, and also employees not covered under any such agreement.

An existing plan which would be entitled to a delayed participation vesting, funding, etc. provision is to be permitted to elect to have all those provisions apply sooner. Any such election is to be made under regulations, must apply with respect to all the provisions of the Act, and is to be irrevocable.

III. Vesting and Related Rules (Secs. 203-209, 1012, 1015, 1021, 1022, and 3032 of the Bill, and Secs. 401, 411, and 414 of the Internal Revenue Code.)

Under the House bill a plan was required to meet one of three minimum vesting schedules. First, a plan could provide a graded vesting standard, under which the employee must be at least 25 percent vested in his accrued benefit after 5 years of covered service, with 5 percent additional vesting for each of the next 5 years, and 10 percent additional vesting for each year thereafter (so that the employee was 100 percent vested after 15 years of service). Second, a plan could provide that each employee must be 100 percent vested after 10 years of service. Third, a plan could provide for a "rule of 45," under which each employee with 5 years or more of service would be 50 percent vested when the sum of his age and his years of service equaled 45, with 10 percent additional vesting for each year thereafter.

Under the Senate amendment, plans generally were required to comply with the first of these alternatives, the graded vesting schedule. However, plans which were already using the 10-year/100-percent vesting schedule were permitted to continue to use that method.

The conference substitute is described below.

Plans subject to the provisions; exceptions from coverage; exemption for church plans

The rules in these areas are the same as the corresponding rules discussed above under Participation and Coverage.

General rules

Under the conference substitute [1] plans must provide full and immediate vesting in benefits derived from employee contributions.

With respect to employer contributions, the plan (except class year plans) must meet one of three alternative standards. Two of those, the 5- to 15-year graded standard and the 10-year/100-percent standard are the same as provided in the House bill (and briefly described above). The third standard under the conference substitute is a modification of the House-bill "rule of 45". As under the House rule, under the modified rule of 45, an employee with 5 or more years of covered service must be at least 50 percent vested when the sum of his age and years of covered service total 45, and there must be provision for at least 10 percent additional vesting for each year of covered service thereafter. Unlike the House bill, however, each employee with 10 years of covered service (regardless of his age) must be at least 50 percent vested and there must be provision for 10 percent additional vesting for each year of service thereafter.

In addition, all plans would have to meet the requirement of present law that an employee must be 100 percent vested in his accrued benefit when he attains the normal or stated retirement age (or actually retires).

Service credited for vesting purposes

Generally, under the conference substitute, once an employee becomes eligible to participate in a pension plan, all his years of service with an employer (including preparticipation service, and service performed before the effective date of the Act) are to be taken into account for purposes of determining his place on the vesting schedule. However, the plan may ignore periods for which the employee declined to make mandatory contributions, and periods for which the employer did not maintain the plan or a predecessor plan, as defined in Treasury regulations (i.e., if the plan provides past service credits for purposes of benefit accrual, it must also provide past service credits for purposes of participation and vesting).

Generally, the plan may also ignore service performed before age 22; however, if a plan elects to use the rule of 45, service before age 22 may be ignored only if the employee was not a participant in the plan during the years before age 22.

The plan may also exclude part-time or seasonal service (i.e., generally years when the employee had less than 1,000 hours of service).

Also, if the employee has had a "break in service", his service performed prior to the break may be ignored to the extent permitted under the "break in service" rules (discussed below).

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[1] Unless otherwise indicated, the rules with respect to vesting appear in both title I and title II of the conference substitute. Unless otherwise indicated, the regulations with respect to vesting are to be written by the Secretary of the Treasury, or his delegate.

Service performed prior to January 1, 1971, may be ignored by the plan, unless (and until) the employee has at least 3 years of service after December 31, 1970.

Year of service defined

In general, under the conference substitute, the rules with respect to "year of service", seasonal and part-time employees, etc., are the same for purposes of the vesting schedule as they are for purposes of participation (i.e., generally 1,000 hours of service except for seasonal industries, where the customary work year is less than 1,000 hours). However, the relevant year for purposes of applying the vesting schedule may be any 12-month period provided under the plan (plan year, calendar year, etc.) regardless of the anniversary date of the participant's employment (even though the anniversary date is the measuring point for purposes of the participation requirements for an employee's first year).

For purposes of benefit accrual, in general, the plan may use any definition of the term "year of service" which the plan applies on a reasonable and consistent basis (subject to Department of Labor regulations). (Of course, the "year" for benefit accrual purposes cannot exceed the customary work year for the industry involved.) However, the plan must accrue benefits for less than full time service on at least a pro rata basis. For example, if a plan requires 2,000 hours of service for a full benefit accrual (50 weeks of 40 hours each) then the plan would have to accrue at least 75 percent of a full benefit for a participant with 1,500 hours of service. Generally, a plan would not be required to accrue any benefit for years in which the participant had less than 1,000 hours of service. In the case of industries or occupations where the customary year is less than 1,000 hours (for example, the tuna fishing industry, or the winter season employees of a ski lodge), the rules with respect to benefit accrual would be determined under Department of Labor regulations. As previously indicated a special rule is provided for the maritime industries.

Breaks in service

Under the conference substitute, a 1-year break in service occurs in any calendar year, plan year, or other consecutive 12-month period designated by the plan and applied on a consistent basis (and not prohibited under Labor Department regulations) in which the employee has no more than 500 hours of service. For example, if the plan is on a calendar year basis, and the employee works 1,000 hours in 1976, 501 hours in 1977, 501 hours in 1978, and 1,000 hours or more in 1979, the employee would not have a break in service (although the plan would not be required to accrue benefits or give vesting schedule credit for 1977 or 1978).

The rules with respect to breaks in service for vesting and benefit accrual purposes may be summarized as follows:

(1) If an employee has a 1-year break in service, the plan may require (for administrative reasons) a 1-year waiting period before his pre-break and post-break service must be aggregated under the plan. However, once the employee has completed this waiting period, he must receive credit for that year (for purposes of vesting and accrued benefit).

(2) In the case of an individual account plan (including a plan funded solely by individual insurance contracts, as well as a "target benefit plan") if any employee has a 1-year break in service, his vesting percentage in pre-break benefit accruals does not have to be increased as a result of post-break service.

(3) Subject to rules (1) and (2), once an employee has achieved any percentage of vesting, then all of his pre-break and post-break service must be aggregated for all purposes.

(4) For all nonvested employees (and subject to rules (1) and (2)), the employee would not lose credits for pre-break service until his period of absence equaled his years of covered service. Under this "rule of parity" for example, if a nonvested employee had three years of service with the employer, and then had a break in service of 2 years, he could return, and after fulfilling his 1-year reentry requirement, he would have 4 years of covered service, because his pre-break and post-break srevice would be aggregated.[2]

For years beginning prior to the effective date of the vesting provisions, a plan may apply the break-in-service rules provided under the plan, as in effect from time to time. However, no plan amendment made after January 1, 1974, may provide for break-in-service rules which are less beneficial to any employee than the rules in effect under the plan on that date, unless the amendment complies with the break-in-service rules established under this bill.

The principles of some of the rules outlined above may be illustrated as follows: For example, assume a plan is on a calendar year basis, and an employee with a 1-year break in service reenters employment on November 1, 1976, works 200 hours in 1976, and 1,700 hours by November 1, 1977. In this case, the employee would be eligible to reenter the plan on November 1, 1977, his pre-break and post-break service would be aggregated, he would advance one year on the vesting schedule for 1977, and he would also accrue benefits for 1977. On the other hand, if the employee reentered employment on March 1, 1976, worked 1,700 hours before December 31, 1976, and was not separated from service by March 1, 1977, he would be eligible to reenter the plan on March 1, 1977, advance one year on the vesting schedule for his 1976 service, and the plan would have to provide at least a partial benefit accrual for 1976.

Predecessor employer

The rules concerning service with a predecessor employer are the same for purposes of vesting and benefit accrual as the rules for purposes of participation, discussed above.

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[2] Also, in the case of a defined benefit plan, the employee would have at least 3 years of accrued benefits under the plan (2 years of accrued benefits due to his pre-break participation and 1 year of benefits accrued with respect to the 1 year reentry period).

Multiemployer plans

Under the conference substitute, service with any employer, for any year in which the employer is a member of the plan, is to be counted for purposes of vesting as if all employers who are parties to the plan were a single employer.

Permitted forfeitures of vested rights

Under the conference substitute, except as outlined below, an employee's rights, once vested, are not to be forfeitable for any reason. An employee's rights to benefits attributable to his own contributions may never be forfeited.

(1) The plan may provide that an employee's vested rights to benefits attributable to employer contributions may be forfeited on account of the employee's death (unless a "joint and survivor" annuity is to be provided).

(2) Also, the plan may provide that payment of benefits attributable to employer contributions may be suspended for any period in which the employee is reemployed by the same employer under whose plan the benefits are being paid (in the case of a single employer plan). In the case of a multiemployer plan, however, a suspension of benefit payments is permitted when the employee is employed in the same industry, in the same trade or craft and also in the same geographical area covered under the contract, as was the case immediately before he retired. Regulations with respect to the suspension of benefits are to be prescribed by the Department of Labor.

(3) A plan amendment may reduce an employee's vested or nonvested accrued benefit attributable to employer contributions, but only for the current year, and only if the amendment is adopted within 2½ months from the close of the plan year in question (without regard to any extensions). In the case of a multiemployer plan, the retroactive amendment may effect the current year, and the two immediately preceding years (thus, a multiemployer plan amendment adopted by December 31, 1978, could effect plan benefits for 1976, if the plan was on a calendar year). However, no plan amendment which reduces accrued benefits is permitted unless the Secretary of Labor has 90 days prior notice of the proposed amendment, and approves it (or fails to disapprove it). No such approval is to be granted, except to prevent substantial economic hardship, including a serious danger that the plan will be terminated unless the amendment is allowed. In addition, it must be found that the economic hardship cannot be overcome by means of a funding variance. Subject to these rules, no plan amendment may retroactively reduce the accrued benefit of any participant (whether or not that benefit is vested).

(4) A plan may provide that an employee's rights to benefits from employer contributions may be forfeited where the employee is less than 50 percent vested in these benefits and withdraws all or any part of his own mandatory contributions to the plan. However, the plan must also provide a "buy back" rule, i.e., that the employee's forfeited benefits will be fully restored if the employee repays the withdrawn contributions (with interest of 5-percent per annum, compounded annually) to the plan.

In the case of a plan which does not provide for mandatory contributions after the date of enactment, the plan may provide, in this case, that the employee will forfeit a proportionate part of his pre-date-of-enactment accrued benefits derived from employer contributions even if he is 50 percent or more vested in these benefits. Also, the plan is not required to have a "buy back" clause with respect to the withdrawal of pre-enactment contributions. Additional regulations in this area are to be prescribed by the Secretary of the Treasury, or his delegate.

(5) A plan may provide for the "cash out" of an employee's accrued benefit. In other words, the plan may pay out, in a lump sum, the entire value of an employee's vested accrued benefit. (However, portability is available to the employee because other provisions of the bill permit the employee to reinvest in an individual retirement account on a tax-sheltered basis.) If the plan does make such a cash-out, then the plan would not be required to vest the employee in his accrued benefits which are not vested at the time he separates from the service, if the employee is later reemployed. (However, the employee's pre-break service would have to be taken into account for all other purposes, subject to the break-in-service rules, e.g., for purposes of his place on the vesting schedule.)

A cash-out could be made from the plan without the employee's consent only if the payment (a) was made due to the termination of the employee's participation in the plan, (b) constituted the value of the employee's entire interest in the plan, and (c) did not exceed an amount (to be prescribed in regulations by the Secretary of the Treasury or his delegate), based on the reasonable administrative needs of the plan, and, in any event, not in excess of $1,750 (with respect to the value of the benefit attributable to the employer's contributions). Despite the foregoing provision, generally, the conferees prefer that all amounts contributed for retirement purposes be retained and used for those purposes. Thus, a plan could provide for no cash-out, or the employee's collective bargaining unit might wish to bargain for such a provision.

A higher cash-out could be made with the employee's consent. However, even these voluntary cash-outs could only be made if the employee terminated his participation in the plan, or under other circumstances to be prescribed in regulations.

Moreover, the plan must provide, in all cases (except where a distribution equal to the value of the full accrued benefit is made), that all accrued benefits must be fully restored (except to the extent provided under the break-in-service rules) if the employee repays the amount of the cash-out, with interest. Repayment of an involuntary cash-out would have to be allowed under the plan at any time after the employee reentered employment under the plan, and repayment of voluntary cash-outs would have to be allowed under circumstances to be prescribed in regulations. However, an individual account plan

would not be required to permit repayment after the employee had a one year break in service.

Accrued benefit

Under the conference substitute, the term "accrued benefit" refers to pension or retirement benefits. The term does not apply to ancillary benefits, such as payment of medical expenses (or insurance premiums for such expenses), or disability benefits which do not exceed the normal retirement benefit payable at age 65 to an employee with comparable service under the plan, or to life insurance benefits payable as a lump sum.

Also, the accrued benefit does not include the value of the right to receive early retirement benefits, or the value of social security supplements or other benefits under the plan which are not continued for any employee after he has attained normal retirement age. However, an accrued benefit may not be reduced on account of increasing age or service (except to the extent of social security supplements or their equivalents).

In the case of a plan other than a defined benefit plan, the accrued benefit is to be the balance in the employee's individual account.

In the case of a defined benefit plan, the accrued benefit is to be determined under the plan, subject to certain requirements. In general, the accrued benefit is to be defined in terms of the benefit payable at normal retirement age. Normal retirement age generally is to be the age specified under the plan. However, it may not be later than age 65 or the tenth anniversary of the time the participant commenced participation, whichever last occurs. No actuarial adjustment of the accrued benefit would be required, however, if an employee voluntarily postponed his own retirement. For example, if the plan provided a benefit of $400 a month payable at age 65, this same $400 a month benefit (with no upward adjustment) could also be paid by the plan to an individual who voluntarily retired at age 68.

Each defined benefit plan is to be required to satisfy one of three accrued benefit tests (which limit the extent of "back-loading" permitted under the plan).

The three percent test.—Under this alternative each participant must accrue, for each year of participation, at least 3 percent of the benefit which is payable under the plan to a participant who begins participation at the earliest possible entry age and serves continuously until age 65, or normal retirement age under the plan, whichever is earlier. This test is to be applied on a cumulative basis (i.e., any amount of "front loading" is permitted). Also, in the case of a plan amendment, the test would be cumulative. For example, assume that a plan provided a flat benefit of $200 a month payable at age 65 during the first 10 years of an individual's participation, then amended to provide a flat benefit of $400 a month; the participant's accrued benefit at the end of his 11th year of participation would equal $132 (3 percent of $400, times 11 years of service.)

In addition, if a plan elects this alternative, and if the plan provides a given benefit to a person who is employed when he attains retirement age, who has a given amount of service, then any employee who has that amount of service, even though he leaves before retirement age, would be entitled to this same benefit when he reaches retirement age. For example, if the plan is based on compensation and provides a 40 percent of salary benefit for an employee who served at least 20 years and is still employed at age 65, then the plan must provide that an employee who served 20 years from age 35 to age 55 would be entitled to that same 40 percent of compensation benefit (beginning at normal retirement age or age 65).

133⅓ percent test.—Under this alternative, the plan is to qualify if the accrual rate for any participant for any later year is not more than 133⅓ percent of his accrual rate for the current year. Thus, (unlike the House bill) the conference substitute permits an unlimited amount of "front loading" under this test. The accrual rate can be based on either a dollar or percentage rate. In applying these rules, a plan amendment in effect for the current year is to be treated as though it were in effect for all plan years. (For example, if a plan provides a one percent rate of accrual for all participants in 1976, and is amended to provide a 2 percent rate of accrual for all participants in 1977, the plan will meet this test, even though 2 is more than 1⅓ times 1). Also, if the plan has a scheduled increase in the rate of accruals, which will not be in effect for any participant until future years, this scheduled increase will not be taken into account for purposes of the backloading rules until it actually takes effect. Also, in applying the 133⅓ percent test, social security benefits and all other factors used to compute benefits under the plan will be treated as remaining constant, at current year levels, for all future years.

Pro rata rule.—As a third alternative, the conference substitute contains a modified version of the rule contained in the Senate amendment. Under this test, for purposes of determining the accrued benefit, the retirement benefit is to be computed as though the employee continued to earn the same rate of compensation annually that he had earned during the years which would have been taken into account under the plan (but not in excess of 10), had the employee retired on the date in question. This amount is then to be multiplied by a fraction, the numerator of which is the employee's total years of active participation in the plan up to the date when the computation is being made, and the denominator of which is the total number of years of active participation he would have had if he continued his employment until normal retirement age. This test is cumulative in the sense that unlimited front loading is permitted. For purposes of this test, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant at current year levels for all future years. Also for purposes of this rule the term "normal retirement age" would be defined as set forth above, and the test would apply only to the benefit payable at, or after, normal retirement age

(i.e., it would not take account of subsidized early retirement (to the extent such a benefit does not exceed the benefit payable at normal retirement age) and social security supplements.)[3]

A plan is not to be treated as failing to meet the tests solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service, measured from the anniversary date of employment.

In the case of a plan funded exclusively through the purchase of insurance contracts, the accrued benefit is to be the cash surrender value of the contract (determined as though the funding requirements with respect to the plan had been fully satisfied).

In the case of a variable annuity plan, the accrued benefit is to be determined in accordance with regulations to be prescribed by the Secretary of the Treasury or his delegate.

Benefits accrued in the past

Generally, the vesting rules of the conference substitute are to apply to all accrued benefits, including those which accrued before the effective date of the provisions (subject, however, to the break-in-service rules discussed above). However, many plans now in existence have no accrued benefit formula for the past, thus making it impossible in these cases to determine what the employee is vested in. To deal with this situation, the conference substitute provides that the accrued benefit under a plan for years prior to the effective date of the vesting provisions for any participant is to be not less than the greater of (1) the accrued benefit under the provisions of the plan (as in effect from time to time), or (2) an accrued benefit which is not less than one-half of the benefit which would have accrued under one of the three back-loading tests described above.

The plan may choose which of the 3 standards it wishes to apply for the past (subject to the antidiscrimination rules); however, the same standard must be applied to all the plan's participants on a consistent basis. The plan is not required to choose, for the past, the same test which it applies in the future.

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[3] For example, assume a social security offset plan providing a benefit equal to 2 percent of high-3 years compensation per year of service with the employer, minus 30 percent of the primary social security benefit, with a normal retirement age of 65. Assume also an employee who began employment at age 25, and terminated employment at age 45, 100 percent vested, with high-3 years pay of $19,000, $20,000, and $21,000. At the time the employee separates from service the primary social security benefit payable to him at age 65 (under the social security law as an effect when he terminates) would be $6,000 if he continued to work with the employer at his same annual rate of compensation until normal retirement age. His accrued benefit under the plan would equal $7,100. (If the employee had remained in service until age 65, he would have 40 years service, times 2 percent per year (80 percent), times $20,000 average high-3 years compensation ($16,000), minus 30 percent of the $6,000 primary social security benefit payable to the employee at age 65 under then current law ($16,000 minus $1,800 equals $14,200) times 20/40ths (20 years of service over 40 total years from age 25 to age 65) equals $7,100.)

In the case of a plan amendment, the rule would work as follows. Assume an individual begins participation at age 25 in a plan which provides 1 percent of high-three-years pay during his first 10 years of service. In the 11th year the plan amends to provide 2 percent of pay for all future years of service. The employee separates from service at the end of the 11th year (and is 100 percent vested). His accrued benefit would equal 19.25 percent of average high-three-years pay (10 (years of participation) times 1 percent per year, 30 (years of projected participation) times 2 percent per year, times 11/40ths (11 years of participation over 40 total years between age 25 and age 65)).

Changes in vesting schedule

The conference substitute provides that if, at any time in the future, the plan changes its vesting schedule, the vesting percentage for each participant in his accrued benefit accumulated to the date when the plan amendment is adopted (or the date the amendment becomes effective, if later) cannot be reduced as a result of the amendment. In addition, as a further protection for long service employees, any participant with at least 5 years of service may elect to remain under the pre-amendment vesting schedule with respect to all of his benefits accrued both before and after the plan amendment.

Allocations between employee and employer contributions

The House bill and the Senate amendment are quite similar in the rules they apply in allocating contributions between those made by the employee and the employer and the conference substitute follows the House bill as to technical matters in the case of this provision. In addition, the substitute makes a clarifying amendment which provides (in the case of a defined benefit plan), that the accrued benefit attributable to employee contributions can never be less than the sum of those contributions (computed without interest). This assures that the employee will at least be vested in his own contributions to the plan, on a dollar-for-dollar basis. (Thus, for example, in the case of an individual insurance contract, employer contributions to the plan must at least absorb the load factor, but, of course, payment of the load factor by the employer would not cause the plan to be treated as a plan which was not funded solely through the purchase of insurance contracts.

Discrimination

Under the conference substitute the rules of the House bill are adopted with respect to the relationship of the minimum vesting standards of the bill to the antidiscrimination rules of present law (sec. 401 (a) (4) of the Internal Revenue Code). In general, a plan which meets the vesting requirements provided in this substitute is not to be considered as discriminatory, insofar as its vesting provisions are concerned, unless there is a pattern of abuse under the plan (such as the firing of employees before their accrued benefits vest) or there has been (or there is reason to believe there will be) an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders or who are highly compensated.

In the past, however, the law in this area has been administered on a case-by-case basis, without uniform results in fact situations of a similar nature. As a result, except in cases where actual misuse of the plan occurs in operation, the Internal Revenue Service is directed not to require a vesting schedule more stringent than 40 percent vesting after 4 years of employment with 5 percent additional vesting for each of the next 2 years, and 10 percent additional vesting for each of the following five years. Also, this more rapid vesting would generally not be required except in a case where the rate of likely turnover for officers, shareholders, or highly compensated employees was substantially

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less (perhaps as much as 50 percent less) than the rate of likely turnover for rank-and-file employees. Of course, where there is a pattern of firing employees to avoid vesting, the limitations described above would not apply. Also, it generally is not intended that any plan (or successor plan of a now existing plan) which is presently under a more rapid vesting schedule should be permitted to cut back its vesting schedule as a result of this statement.

In addition, the conferees have directed the joint pension task force study group to examine problems of the interrelationship of the vesting and the antidiscrimination rules carefully. The conferees also expect the Treasury or the Internal Revenue Service to supply information with respect to patterns of benefit loss for different categories of plans (as designated by the task force) under the minimum vesting schedules prescribed under this legislation, and such other information as the task force study group may require. In other words, the experimental rules outlined above (40 percent vesting after 4 years, etc.) are intended to apply only until the responsible congressional committees can review the situation after receiving the report of the task force study group.

Moreover, the conferees intend that the antidiscrimination rules of present law in areas other than the vesting schedule are not to be changed. Thus, the present antidiscrimination rules with respect to coverage, and with respect to contributions and benefits are to remain in effect. Also, the antidiscrimination rules may be applied with respect to benefit accruals.

The conference substitute contains a technical rule to be applied in the case of target benefit plans (and other defined contribution plans), which provides that regulations may establish reasonable earnings assumptions and other factors for these plans in order to prevent discrimination.

Plan termination

Under the conference substitute, as under present law, all accrued benefits in a qualified pension plan must become fully vested (in accordance with the rules of the bill concerning allocation of assets upon plan termination and to the extent then funded) in the event of a plan termination, or the complete discontinuance of contributions under the pension plan. Under the substitute, this rule is no longer to apply to cases where employers have not made contributions to plans covered under the funding requirements of the bill, because the bill reaches this problem by imposing an excise tax on underfunding. However, the rule of full immediate vesting is still to apply in the case of a termination, or partial termination of a plan, and in the case of the discontinuance of contributions to plans which are not subject to the new funding requirements (e.g., profit-sharing plans, church plans, and government plans). Also, the substitute contains a provision to make clear that the vesting requirements under the bill are not intended to operate to overturn rules which require that, in the event

of plan termination, the benefits under the plan are not to be distributed in a manner that discriminates in favor of officers, shareholders, or highly compensated employees.

Class year plans

Under the substitute, the minimum vesting requirements are satisfied in the case of a class year plan if the plan provides for 100 percent vesting of the benefits derived from employer contributions within 5 years after the end of the plan year for which the contributions were made. Also, under the substitute, forfeitures with respect to employer contributions would be permitted on a class-year-by-class-year basis, for any year for which the employee withdraws his own mandatory contributions to the plan, if he is less than 50 percent vested with respect to that year. For purposes of these rules, withdrawals will be applied to the earliest year for which the employee has made contributions which have not yet been withdrawn.

Recordkeeping requirements

Under the conference substitute, in the case of a single employer plan, the employee, once each year, is to be entitled to request his plan administrator to furnish a statement as to his vesting and accrued benefit status. A similar statement is to be supplied automatically when a vested employee terminates his coverage under the plan. In the case of multiemployer plans, the recordkeeping and information supplying duties are to be performed by the plan administrator and, to the maximum extent practicable (in light of their different circumstances), multiemployer plans are to meet the same standards in this area as single employer plans (in accordance with regulations to be prescribed by the Secretary of Labor or his delegate).

Variations

Under the conference substitute, a variation is to be available with respect to the vesting schedule (for benefits attributable to employer contributions) and the accrued benefit rules for plans in existence on January 1, 1974. Under this procedure, a variation is to be allowed only if it is found by the Secretary of Labor that application of the rules of the bill would increase the cost of the plan to such an extent that there would be a substantial danger that the plan would be terminated, or that there would be a substantial reduction in benefits provided under the plan, or in the compensation of the employees. Also, it would have to be determined that the application of the vesting schedule requirements, or accrued benefit requirements, or discontinuance of the plan, would be adverse to the interest of the plan participants as a whole. Finally, it would have to be determined that the hardship described above. could not be sufficiently mitigated by the granting of a funding variance.

The variation with respect to benefit accruals is not to apply for any year except years (not in excess of 7) during which the variation is in effect. (For example, there could be not variation with respect to the rules for benefits accrued in the past.)

No plan may receive a vesting variation unless application is made (in accordance with regulations to be prescribed by the Secretary of

Labor or his delegate) within two years after the date of enactment of this bill. The variation would be granted for an initial period not to exceed 4 years. Plans can receive one additional variation (for a period not to exceed 3 years), but application for the additional variation would have to be made at least one year prior to the expiration of the initial variation period.

During the period when a variation is in effect, there can be no plan amendment which has the effect of increasing plan liabilities because of benefit increases, changes in accruals, or changes in the rate of vesting, except to a de minimis extent (in accordance with regulations to be prescribed by the Secretary of Labor).

Amounts designated as employee contributions

To clarify present law, the substitute provides that amounts contributed to a qualified plan in taxable years beginning after December 31, 1973, are to be treated as employee contributions if they are designated as employee contributions under the plan. This rule does not apply, however, to government "pick-up" plans, where the contribution is paid by the government, with no withholding from the employee's salary, and these amounts would be treated as employer contributions, no matter how designated under the plan.

Joint and survivor annuities

Under the conference substitute, when a plan provides for a retirement benefit in the form of an annuity, and the participant has been married for the one-year period ending on the annuity starting date, the plan must provide for a joint and survivor annuity. The survivor annuity must be not less than half of the annuity payable to the participant during the joint lives of the participant and his spouse.

In the case of an employee who retires, or who attains the normal retirement age, the joint and survivor provision is to apply unless the employee elected otherwise.

In the case of an employee who is eligible to retire prior to the normal retirement age under the plan, and who does not retire, the joint and survivor provisions need not be applicable under the plan, unless the employee made an affirmative election. Moreover, the plan need not make this option available until the employee is within 10 years of normal retirement age. (Of course, a plan may provide that a joint and survivor annuity is to be the only form of benefit payable under the plan, and in this case, no election need be provided.)

These rules should help to avoid the situation where an employee who had not yet retired might have his own retirement benefit reduced as a result of inaction on his part and should also help to prevent adverse selection as against the plan.

The employee is to be afforded a reasonable opportunity, in accordance with regulations, to exercise his election out of, (or, before normal retirement age, possibly into) the joint and survivor provision before the annuity starting date (or before he becomes eligible for early retirement). The employee is to be supplied with a written explanation of the joint and survivor provision, explained in layman's language, as well as the practical (dollar and cents) effect on him

(and his or her spouse) of making an election either to take or not to take the provision. At the same time, regulations in this area should take cognizance of the practical difficulties which certain industries (particularly those having multiemployer plans) may have in contacting all of their participants.

To prevent adverse selection the plan may provide that any election, or revocation of an election, is not to become effective if the participant dies within some period of time (not in excess of two years) of the election or revocation (except in the case of accidental death where the accident which causes death occurs after the election).

Also, the conferees agree with the statements in the Ways and Means Committee report (No. 93–807) to the effect that the bill does not require the plan to "subsidize" the joint and survivor feature (although the plan is permitted to do so) and that plans may make reasonable actuarial adjustments to take account of the possibility that total costs of the plan otherwise might be increased because of adverse selection.

Alienation

Under the conference substitute, a plan must provide that benefits under the plan may not be assigned or alienated. However, the plan may provide that after a benefit is in pay status, there may be a voluntary revocable assignment (not to exceed 10 percent of any benefit payment) by an employee which is not for purposes of defraying the administrative costs of the plan. For purposes of this rule, a garnishment or levy is not to be considered a voluntary assignment. Vested benefits may be used as collateral for reasonable loans from a plan, where the fiduciary requirements of the law are not violated.[4]

Social security benefits of terminated participants

The conference substitute codifies the current administrative practice which provides that qualified plans may not use increases in social security benefits or wage base levels to reduce employee plan benefits that are already in pay status. A similar protection is also extended against reductions in plan benefits where social security benefit levels (or wage base levels) are increased after the individuals concerned are separated from service prior to retirement. This requirement also applies to plans covered under title I (even if the plan is not qualified). A similar principle will apply in the case of an individual receiving disability benefits under social security and also under an employer plan.

Integration with Social Security

As discussed above, title I and title II of the conference substitute provide that plans may not use increases in social security benefit levels to decrease plan benefits in the case of retirees, or individuals who separate from service prior to retirement. The conference substitute also provides (consistent with the Ways and Means Committee report) for a two-year study, by the Congress, of the issues involved in the integration of private pension plans with social security.

Consequently, the substitute provides, in effect, that until July 1, 1976, pension plans may not increase their level of integration by tak-

[4] This rule will not apply to irrevocable assignments made before the date of enactment and the plan provision required under this rule need not be adopted prior to January 1, 1976 (so long as the plan complies with the substance of this rule after enactment).

ing into account changes in the social security wage base, or in social security benefit levels after 1971. Thus, in general, plans may integrate in accordance with Rev. Rul. 71–446, 1971–2 C.B. 187. (For example, an excess plan would integrate in accordance with section 3 of that ruling, and the tables set forth therein.) Of course, plans which do not satisfy the integration requirements as to form, but do in operation satisfy the requirements of Rev. Rul. 771–446, will be permitted to integrate under the conference substitute.

Certain plans, which are currently integrated above 1971 levels, are permitted to retain their current levels of integration (as in effect on June 27, 1974), but would not be permitted an increase. (For example, a unit benefit excess plan which now provides 1 percent of pay in excess of $11,000 per year of future service could remain at this level, but could not change to take account of a wage base higher than $11,000.)

To prevent undue hardship, in the case of plans which are automatically keyed to changes in the social security wage base or benefit levels (for example, a unit benefit excess plan now at the $13,200 wage base in effect on June 27, 1974), the plan is not required to amend until June 30, 1975, but any such amendment must be retroactive to January 1, 1975, and must provide that the plan does not take account of any changes in the social security wage base or in social security benefit levels which may occur after June 27, 1974.

For purposes of the rules with respect to retirees, or other individuals who have separated from service, any change in the plan after June 30, 1976, which takes account of the increases in the social security wage base or benefit levels which are temporarily frozen under these provisions, may not be used to reduce plan benefits otherwise payable to individuals who retire, or separate from service, between June 27, 1974 and June 30, 1976.

Payment of benefits

Under the conference substitute, a plan is generally required to commence benefit payments (unless the participant otherwise elects) not later than the 60th day after the close of the plan year in which the latest of the following events occurs:

(1) the participant attains age 65 (or any earlier normal retirement age specified under the plan),

(2) ten years have elapsed from the time the participant commenced participation in the plan, or

(3) the participant terminates his service with the employer.

Also, if the plan permits an employee who has not separated from service to receive a subsidized early retirement benefit if he meets certain age and service requirements, the plan must also permit an employee who fulfills the service requirement, but separates from service before he meets the age requirement, to receive benefit payments, on an actuarially reduced basis, when the separated employee meets the age requirement. For example, if the plan provides a benefit of $100 a month at age 65, or at age 55 for employees with 30 years of service who are still employed on their 55th birthday, then an employee who separates from service at age 50 with 30 years service, would have the right to draw down an actuarially reduced benefit (perhaps $50 a

month) at age 55. The actuarial adjustments are to be made in accordance with regulations to be prescribed by the Secretary of the Treasury, or his delegate.

Comparability of plans having different vesting provisions under the antidiscrimination rules

The conference substitute provides that highly mobile employees, such as engineers, are permitted to trade off high benefits which might be available under one retirement plan of their employer for their right to participate in another plan with lower benefits, but more rapid vesting.

Protection of pension rights under Government contracts

Under the conference substitute, the Secretary of Labor is to undertake a study of steps which can be taken to ensure that professional, scientific, technical, and other personnel employed under Federal contracts are protected against loss of their pensions resulting from job transfers or loss of employment. The Secretary of Labor is to report to Congress on this subject within two years after the date of enactment of the bill and is, if feasible, to develop recommendations for Federal procurement regulations to safeguard pension rights in the situations in question within one year after filing his report. These regulations are to become effective unless either House of Congress adopts a resolution of disapproval within 120 days after the proposed regulations are submitted to the Congress. Any such disapproval is to be referred to the Labor Committee of the relevant House.

Effective dates

The effective dates of the provisions with respect to participation and vesting are discussed above under "Participation and Coverage."

IV. Funding (Secs. 301–306, 1013, and 1014 of the Bill and Secs. 412, 413, and 4971 of the Internal Revenue Code)

The House bill would provide new minimum funding standards for plans of employers (or employee organizations) in interstate commerce (title I) and for tax-qualified plans (title II). Under the House version of the bill, the new minimum funding standard would require that currently-created costs be funded currently, and that costs attributable to already existing liabilities, past service liabilities created under plan amendments, and experience losses be amortized over stated periods of time. The House funding standards generally are based on accrued liabilities and not only on vested liabilities. However, if the funding requirements are higher under a second general standard which is based on "vested" liabilities, this standard would apply in lieu of the other rules. Where the funding requirements would create financial hardship, and certain standards are met, the Secretary of the Treasury or Secretary of Labor could permit variances in meeting the funding requirements.

The Senate amendment is basically similar to the House bill, but differs somewhat with respect to some of the periods of time allowed for amortizing past service cost and with respect to several technical provisions. Also, the Senate amendment does not include a second general funding standard based upon "vested" liabilities.

Generally, the conference substitute follows the House bill with respect to amortization periods and with respect to technical aspects, but modifies the House bill in other respects.

General rule as to funding

The conference substitute establishes new minimum funding requirements for plans of employers and unions in or affecting interstate commerce (title I) and qualified plans (title II) so these plans will accumulate sufficient assets within a reasonable time to pay benefits to covered employees when they retire. Of course, contributions generally may be greater than these minimum requirements if the employer so desires. (However, there may be limits on the ability to currently deduct these larger contributions, under the tax laws.) The new requirements generally are not to apply to profit-sharing or stock bonus plans, governmental plans, certain church plans, plans with no employer contributions, and certain insured plans. Under the tax provisions, once a plan or trust has been tax qualified, the minimum funding requirements will apply, and they are to continue to apply to the plan or trust, even if it later loses its qualified status. If a plan loses its qualified status, the deduction rules for nonqualified plans are to apply even though the minimum funding standard continues to apply to the plan.

Generally, under the new funding requirements, the minimum amount that an employer is to contribute annually to a defined benefit pension plan includes the normal costs of the plan plus amortization of past service liabilities, experience losses, etc. Except as described below (under "Variances—alternative funding methods"), minimum amortization payments required by the conference substitute are calculated on a level payment basis—including interest and principal—over stated periods of time and are based on all accrued liabilities. Generally, initial past service liabilities and past service liabilities arising under plan amendments are to be amortized over no more than 30 years (40 years for the unfunded past service liabilities on the effective date of these new funding rules, in the case of existing plans), and experience gains and losses are to be amortized over no more than 15 years. However, generally experience gains and losses need not be calculated more often than every three years. With respect to multiemployer plans, past service liabilities generally may be amortized over no more than 40 years, and experience losses over no more than 20 years. Following the Senate amendment, the conference substitute does not include a second general minimum funding standard based only on "vested" liabilities.

If an employer would otherwise incur substantial business hardship, and if application of the minimum funding requirements would be adverse to plan participants in the aggregate, the Internal Revenue Service may waive the requirement of current payment of part or all of a year's contributions of normal costs, and amounts needed to amortize past service liabilities and experience losses. This waiver is to be available for single employer and multiemployer plans. The amount waived (plus interest) is to be amortized not less rapidly than ratably (including interest) over 15 years, and no more than 5 waivers may be granted for any 15 consecutive years. Also, the Secretary of Labor may

extend the amortization period for amortization of past service costs up to an additional 10 years, on a showing of economic hardship.

For money purchase pension plans, the minimum amount that an employer is to annually contribute to the plan generally is the amount that must be contributed for the year under the plan formula. For purposes of this rule, a plan (for example, a so-called Taft-Hartley plan) which provides an agreed level of benefits and a specified level of contributions during the contract period is not to be considered a money purchase plan if the employer or his representative participated in the determination of the benefits. On the other hand, a "target benefit plan" is to be treated as a money purchase plan for purposes of the minimum funding rules.

Under the new funding rules, generally each covered plan is to maintain a new account called a "funding standard account." This account is to aid both the taxpayer-employer and the Government in administering the minimum funding rules. The account also is used to assure that a taxpayer who has funded more than the minimum amount required is properly credited for that excess and for the interest earned on the excess. Similarly, where a taxpayer has paid too little, the account is to assist in enforcing the minimum funding standard, and to assure that the taxpayer is charged with interest on the amount of underfunding.

Each year the funding standard account is to be charged with the liabilities which must be paid to meet the minimum funding standard. Also, each year the funding standard account is to be credited with contributions under the plan and with any other decrease in liabilities (such as amortized experience gains). If the plan meets the minimum funding requirements as of the end of each year, the funding standard account will show a zero balance (or a positive balance, if the employer has contributed more than the minimum required). If the minimum contributions have not been made, the funding standard account will show a deficiency (called an "accumulated funding deficiency"). If there is an accumulated funding deficiency, an excise tax is to be imposed on the employer who is responsible for making contributions to the plan. Also, the responsible employer may be subject to civil action in the courts on failure to meet the minimum funding standards.

The differences between the House bill and the conference substitute are described below.

Additional funding standard

The conference substitute, following the Senate amendment, does not include an additional funding standard which would require a contribution of the first year's payment under a 20-year amortization schedule of unfunded vested liabilities.

Reasonable actuarial assumptions

The conference substitute combines the rules relating to actuarial assumptions of the House bill and of the Senate amendment and requires that, for purposes of the minimum funding standard, all plan costs, liabilities, rates of interest, and other factors under the plan are to be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable. Actuarial assumptions are to take into account the experience of the plan and reasonable expecta-

tions. These assumptions are expected to take into consideration past experience as well as other relevant factors.

In addition, under the conference substitute, the actuarial assumptions in combination are to offer the actuary's best estimate of anticipated experience under the plan. The conferees intend that under this provision a single set of actuarial assumptions will be required for all purposes (e.g., for the minimum funding standard, reporting to the Department of Labor and to participants and beneficiaries, financial reporting to stockholders, etc.).

Treatment of certain changes as experience gains or losses

The House bill does not indicate how funding is to be provided where there is a change in liabilities arising from changes in actuarial assumptions used. The Senate amendment would include such changes in liabilities as experience gains or losses. Under the conference substitute, changes in plan liabilities resulting from changes in actuarial assumptions are to be amortized over a 30-year period.

Definition of experience gain or loss

Under the conference substitute (following title II of the House bill and the Senate amendment) experience gain or loss is the difference between the anticipated experience of the plan and the actual experience.

The conferees understand that certain plans are maintained pursuant to collectively bargained agreements which provide for a predetermined level of contributions over a period longer than 12 months, such as a specified dollar amount per hour of covered service by an employee or a specified dollar amount per ton of coal mined. It is intended that, for the funding requirements to be workable in these cases, employers generally must be allowed to base their contributions on the bargained and agreed upon basis during the period to which the collective bargaining agreement relates (but generally for not more than three years). Under such a plan, if the actuarial assumptions were reasonable and the actuarial calculations were correct as of the beginning of the term of the agreement, and the agreed upon contributions were made when required during the term of the agreement, it is intended that there would be no deficiency in the funding standard account for the term of the collectively bargained agreement (limited as indicated above). This would be the case even if the amount of contributions were less than what was reasonably expected at the beginning of the term of the agreement (for example, because the hours worked or the tons of coal mined were less than reasonably anticipated). In this case, it is expected that any difference between the reasonably anticipated contributions and actual contributions would be treated as an experience loss which could be made up under the next agreement by adjustment of the contribution rate (or by adjustment of the level of benefits).

Change in funding method or plan year

The conference substitute (following the House bill and Senate amendment) provides that a change in a plan's funding method (or plan year) can be used to determine plan costs and liabilities only if the change is approved by the administering Secretary. (Note that this

requirement of prior approval does not apply to use of the alternative minimum funding standard, described below.) The conferees intend that a change in funding method or plan year also is to be reported to the Pension Benefit Guaranty Corporation in order that the Corporation may be fully apprised of events which may adversely affect the funding status of a plan.

Full funding limitation

Both the House bill and the Senate amendment include special provisions establishing the minimum amount to be funded where the difference between plan liabilities and plan assets is smaller than the amount otherwise required to be contributed under the minimum funding requirement for the year. Generally, these provisions are substantially the same; the conference substitute follows the House bill in the technical aspects. However, the conferees wish to clarify statements in the House report with respect to the time at which plan liabilities and plan assets are to be valued for purposes of determining the full funding standard. Generally, the conferees intend that assets and liabilities are to be valued at the usual time used by the plan for such valuations, if done on a consistent basis and in accordance with regulations.

Retroactive plan amendments

The House bill generally would allow limited amendments of plans which retroactively decrease plan benefits (without the approval of the Secretary of Labor), and also would allow other plan amendments which retroactively decrease plan benefits, with the approval of the Secretary of Labor. The Senate amendment included no similar provisions.

The conference substitute generally allows limited retroactive plan amendments, but only with the approval of the Secretary of Labor.

Under the conference substitute, plan amendments that reduce plan benefits may be made after the close of the plan year, and yet apply to that year if they are made within 2½ months after the end of the plan year. However, since a single plan year is not a workable standard for multiemployer plans, with respect to multiemployer plans, an amendment may be made under the conference substitute within 2 years of the close of the plan year.

To protect participants, amendments made under this provision are not to decrease vested benefits of any participant determined as of the time the amendment is adopted. In addition, such a retroactive amendment cannot reduce the accrued benefit (whether or not vested) of any participant determined as of the beginning of the first plan year to which the amendment applies. Moreover, such an amendment is not to retroactively reduce the accrued benefit of any participant, unless there would otherwise be an accumulated funding deficiency for all or part of the plan year in question, the funding deficiency could not be avoided through the implementation of any other reasonably available alternative (including amortization of experience losses or a waiver of the funding requirement), and the funding deficiency was not primarily attributable to the failure by employers to discharge contractual obligations to make contributions under the plan (e.g., failing to contribute a required amount per hour of work of plan participants).

Under the conference substitute, the plan administrator is to notify the Secretary of Labor of any amendment which retroactively decreases plan liabilities, before the amendment goes into effect. The amendment can then go into effect only if the Secretary has approved it, or if the Secretary does not disapprove it within 90 days after notice is filed. It is expected that within the 90-day period the Secretary may notify the plan of a tentative disapproval, if he needs more information or more time before making a final determination. The Secretary of Labor is not to approve any retroactive amendment unless he determines that it meets the requirements discussed above and determines that it is necessary because of substantial business hardship.

Three-year determination of gains and losses

Under the House bill, experience gains and losses would be determined every three years (more frequently in particular cases as required by regulations). Under the Senate amendment, an annual determination of gains and losses and an annual valuation of liabilities would be required.

The conference substitute follows the rules of the House bill. The conferees intend that regulations may be issued to require a determination of gains and losses and valuation of a plan's liabilities more frequently than every three years with respect to situations where there is a need for more frequent review. For example, the regulations might provide that a determination of experience gains and losses would be made more frequently than every three years by plans which have sustained substantial experience gains or losses for several periods in succession.

Year-by-year waivers

Title II of the House bill and the Senate amendment both provide that the Secretary of the Treasury may waive all or part of the minimum funding requirement for a plan year if an employer is unable to satisfy this requirement without incurring substantial business hardship.

The conference substitute follows the House bill with respect to the technical aspects and with respect to the number of variances that may be granted in any consecutive period of years. In addition, under the conference substitute, it is made clear that this waiver is to be available for employers contributing to a multiemployer plan. For multiemployer plans, the Secretary of Treasury may waive part or all of the funding requirements if at least 10 percent of the employers contributing to the plan demonstrate that they would experience substantial business hardship without the waiver, and if applying the minimum funding standard would be adverse to the interests of plan participants as a whole.

Variances—extension of amortization periods

The House bill would allow the Secretary of Labor to extend the amortization periods for funding past service liabilities or experience gains and losses of plans for an additional ten years, in cases of substantial business hardship. (Under the labor provisions of the House bill, this would be available for all plans under the general variance provision; under the tax provisions this would be available only for

multiemployer plans.) A similar provision is included under the Senate amendment.

Under the conference substitute, the Secretary of Labor may extend the amortization period for unfunded past service liabilities and experience gains and losses for both multiemployer and single employer plans. These periods may be extended up to an additional ten years where there would otherwise be a substantial risk that the plan might be terminated or a substantial risk that pension benefit levels or employee compensation might be limited. Additionally, to grant an extension of time the Secretary must find that (1) the extension would carry out the purposes of the Act, (2) the extension would provide adequate protection for participants and beneficiaries, and (3) not granting the extension would be adverse to the interests of plan participants and beneficiaries as a whole.

Variances—alternative funding methods

Title I of the House bill provides that the Secretary of Labor may prescribe an alternative minimum funding method for multiemployer or single employer plans in certain cases of hardship. The Senate amendment does not include any similar provision. The conference substitute does not include a general provision allowing the Secretary of Labor to prescribe an alternative minimum funding method. However, the substitute provides an alternative method for a multiemployer plan to satisfy the minimum requirements for funding past service liabilities existing as of 12 months after the first date on which the minimum funding standards apply to the plan. This alternative method may be used only by multiemployer plans which were in existence on January 1, 1974, if (on that date) the contributions under the plan were based on a percentage of pay.

Under this alternative, an eligible plan may elect to fund, over the relevant amortization period, the applicable past service liabilities with contributions that are a level annual percentage of the aggregate pay of all participants under the plan (instead of funding these liabilities with level dollar payments) over the appropriate amortization period. The minimum amount to be paid under this alternative is the interest (at the rate otherwise used by the plan in determining its liabilities) on initial past service liabilities and past service liabilities created by plan amendment. Also, this interest assumption, by itself, must be a reasonable rate; and the assumption with respect to aggregate pay must, by itself, be a reasonable assumption. This is necessary because these two assumptions have a key role, individually, in determining the amount that will be contributed to a plan under this alternative amortization method.

Limit on increase in benefits during variance

The House bill provides that while a variance is in effect the plan cannot be amended to increase liabilities by an increase in benefits, a change in the accrual of benefits, or a change in the rate of vesting. A similar limitation is included in the Senate amendment.

The conference substitute generally follows the House bill in its technical aspects and limits plan amendments which increase liabilities where there has been a year-by-year waiver, or an extension of time to amortize past service costs or experience gains and losses. This

limitation is to apply until the waived amount has been fully amortized or until the extension of time for amortization is no longer in effect. Also, under the conference substitute, benefits may not be increased if there has been a plan amendment which retroactively decreased plan benefits within the preceding 12 months (24 months in the case of multiemployer plans). However, the conference substitute makes it clear that reasonable, *de minimis* increases in plan liabilities are to be allowed, under regulations of the Secretary of Labor. (It is expected that the regulations will indicate the types of plan amendments considered *de minimis* for this purpose.) Also, amendments are to be allowed even though they increase plan liabilities if they are required as a condition of tax qualification. Further, amendments which merely repeal (in whole or in part) a previous retroactive decrease in benefits are to be allowed.

Alternative minimum funding standard

Under title II of the House bill, the same funding method and assumptions would be used for determining the minimum amount that must be contributed to a plan and for determining the maximum amount for which a current tax deduction is available. The Senate amendment does not include a similar requirement.

The conference substitute generally follows the rules of the House bill in requiring the funding method used by a plan to be the same for purposes of determining the minimum amount to be contributed and the maximum deduction for contributions. However, the conference substitute also would allow the use of an alternative minimum funding standard in order that there may be some leeway between the minimum required contributions and the maximum deductible contributions.

Under the alternative funding standard, generally the minimum amount to be contributed to a plan is (1) the excess (if any) of the value of accrued benefits over the value of plan assets, plus (2) normal cost. Under this standard, plan assets are to be annually valued at fair market value and plan liabilities are to be valued on the same basis as the Pension Benefit Guaranty Corporation would have computed them if the plan terminated. These valuation methods are used because this minimum funding standard is similar to a "termination test" funding standard. When the financial status of a plan is examined on a termination basis, it is considered appropriate to use fair market valuations rather than valuations which tend to spread out fluctuations in value. In addition, under this standard normal cost is to be the lesser of normal cost as determined under the method used by the plan or normal cost under the unit credit method.

The alternative standard generally is to be available only for plans using funding methods which provide contributions which are no less than the contributions required under the entry age normal method. In this case, plan participants and beneficiaries will have the protection of a relatively faster build-up of plan assets in the early years of the plan than under, *e.g.*, the unit credit method.

On electing to use the alternative method, a plan must maintain an alternate funding standard account. The account will be charged with normal costs plus the excess of accrued benefits over assets (but not

less than zero), and will be credited with contributions. There is to be no carryover of contributions over the minimum required from one year to another, because this amount automatically will become part of the next year's calculation in determining whether liabilities are greater than assets (that is, excess contributions will become part of plan assets for purposes of the next year's calculation). On the other hand, any shortfall of contributions less than the amount required will be carried over from year to year (with interest added) and an excise tax will be payable on these amounts (or on the funding deficiency as shown by the basic funding standard account, if smaller).

A plan that chooses to use the alternative funding method is to maintain both an alternative funding standard account and the basic funding standard account. The basic funding standard account will be charged and credited under the usual rules, but an excise tax generally will not be owed on any "deficiency" shown in that basic account. A plan making this choice is required to maintain both accounts because the minimum funding requirement will be the minimum required contribution under either account, whichever is the lesser.

The requirement under the alternative method could become higher than under the basic method if there was a substantial decrease in the market value of the assets, or if there was a substantial increase in plan liabilities (as through a plan amendment). If the minimum required contributions are lower under the basic standard than under the alternative standard, it is expected that the plan will switch back to the basic funding method.

If a plan switches back from the alternate funding standard to the basic funding standard, generally there is to be a 5-year amortization of the excess of charges over credits that have built up in the basic funding standard account over the years in which the alternative funding standard has been used. This will give the employer a reasonable period of time to fund the amounts that otherwise would have been contributed under the basic funding method, but were not contributed while the alternative funding method was being used. However, to the extent that excess charges (over contributions) have been previously built up in the alternate funding standard account, these are not to be amortized over 5 years, but instead are to be contributed immediately if the excise tax on underfunding is to be avoided. When an employer switches back from the alternative funding standard to the basic funding standard, the employer ceases to maintain the alternate minimum funding standard account. If the employer in some subsequent year returns to the alternate standard, a new account with a zero balance is to be established.

Timing of contributions

The conference substitute clarifies the intent of both the House bill and the Senate amendment, that contributions made after the close of a plan year may relate back to that plan year for purposes of the minimum funding standards. Under the conference substitute, the contribution may relate back to the plan year if it is made within 2½ months after the close of that plan year, plus any extension granted by the Internal Revenue Service up to an additional 6 months (for a maximum of 8½ months after the end of the year).

Coverage and exemptions from coverage

Under title I of the House bill, pension plans of employers in interstate commerce and pension plans of employee organizations with members in interstate commerce generally are covered by the minimum funding rules. Under title II, the new minimum funding rules apply to plans which are, or have been determined to be, tax-qualified. The Senate amendment is substantially the same as title II of the House bill, and in addition reaches substantially the same result as title I of the House bill by generally requiring all plans in interstate commerce to qualify under the tax laws. The conference substitute follows the House bill.

Under the conference substitute, government plans, including plans financed by contributions required under the Railroad Retirement Act, are to be exempt from the new funding requirement but they must meet the requirements of present law (sec. 401(a)(7) of the Internal Revenue Code). The conferees intend that no changes are to be made in the application of the present funding requirements of the Internal Revenue Code to government plans. Although present law establishes a "safe haven rule" for payment of normal cost plus interest on past service costs, it is not intended that this safe haven rule become a requirement for government plans, but that (as under present Regs. § 1.401–6(c)(1)) the determination on whether a plan has terminated is to be made on "all the facts and circumstances in the particular case." Thus, it is intended that there be no change in the application of present law to government plans.

The conference substitute exempts church plans from the new funding requirement if they meet the requirements of present law. However, church plans which elect to be covered under the participation, vesting, and termination insurance provisions are also to be covered by the new funding requirements.

The conference substitute excludes from the minimum funding rules plans established and maintained outside the United States if they are primarily for the benefit of persons substantially all of whom are nonresident aliens. This is specifically provided in the title I provisions, while under title II, such plans would have no need to seek tax deferral qualification.

The conference substitute excludes from the minimum funding rules of title I unfunded plans maintained by the employer primarily to provided deferred compensation for select management or highly compensated employees (under title II, such plans do not seek tax qualification). The conferees intend that this exemption is to include "consultant contracts" for retired management employees. Additionally, the substitute exempts from the funding rules plans adopted by a partnership exclusively for the benefit of a partner pursuant to section 736 of the Internal Revenue Code.

Under the conference substitute, plans which have not provided for employer contributions at any time after the date of enactment are to be exempt from the minimum funding rules (i.e., plans of unions funded exclusively by contributions of the union members).

An exemption is also provided for profit-sharing and stock bonus plans; however, money purchase pension plans and other individual account plans generally are not excluded from the minimum funding rules.

It is intended that plans generally are to be considered money purchase pension plans which meet the "definitely determinable" standard where the employer's contributions are fixed by the plan, even if the employer's obligation to contribute for any individual employee may vary based on the amount contributed to the plan in any year by the employee. For example, it is expected that a matching plan which provides that an employer will annually contribute up to 6 percent of an employee's salary, but that this contribution will be no more than the employee's own (nondeductible) contribution, will meet the "definitely determinable" criteria. In this case, the employer's contributions are set by the plan, will not vary with profits, and cannot be varied by the employer's action (other than by a plan amendment). (Of course, the plan must meet the nondiscrimination and other requirements of the Code to be qualified.)

Plans funded exclusively by the purchase of certain qualified level premium individual insurance contracts also are not to be subject to the minimum funding requirements. Additionally, the conference substitute makes it clear that where, instead of buying a series of such individual contracts, the employer holds a group insurance contract under which each employee's plan benefit is funded in the same manner as if individual contracts were purchased, the situation is to be treated the same as where there are individual insurance contracts. This generally will be available where the employer's premium is based on the sum of the level premiums attributable to each employee, where an employee's accrued benefit at any point in time is comparable to what would be provided under an individual contract, and as otherwise determined by regulations.

Supplemental unfunded plans which provide benefits in excess of limitations on contributions and benefits under the Internal Revenue Code and plans which are for the highly paid are to be excluded from the new funding standard. In addition, plans established by fraternal societies or other organizations described in section 501(c) (8) or (9) of the Internal Revenue Code are to be exempt if no employer contributions are made to the plan. Also, trusts which are part of plans described in section 501(c)(18) of the Code are to be exempt from the funding standards of title I (the standards of title II do not apply because those plans are not qualified plans).

With respect to the civil enforcement of the funding requirements, see "Labor and Tax Administration and Enforcement," "*Labor Department*" (Part VII, below). The excise tax provisions on underfunding in the conference substitute are the same as those in the House bill. However, before sending a notice of deficiency with respect to the first level (and second level) tax, the Internal Revenue Service is to notify the Secretary of Labor and provide him reasonable opportunity to obtain a correction of the funding deficiency, or to comment on the imposition of these taxes. The Service will be able to waive (or abate) the second level, but not the first level, tax upon a correction of underfunding that is obtained by the Secretary of Labor.

Maximum deduction limitation

The substitute generally provides that deductions are to be allowed to the extent of contributions required to meet the minimum funding standards. In addition, the present "5 percent" method allowing

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deductions of not in excess of 5 percent of the annual compensation of covered employees is repealed. Also, the "normal cost" method allowing deductions for normal cost, plus 10 percent of unfunded past service cost, is to be amended to allow deductions for contributions of normal cost, plus amortization over 10 years. Further, deductible limits are to be determined under the funding method and actuarial assumptions used for the minimum funding rules.

Generally, under the substitute, the maximum deduction is to be limited to the required contribution where a plan is subject to the full funding limitation. However, a special election is available under the substitute with regard to deductions if a plan becomes fully funded as a result of an amendment that decreases plan liabilities (benefits payable under the plan). This election is available only with respect to plan amendments that are negotiated through the collective bargaining process. Under this election, the maximum amount deductible generally will be normal cost under the plan less the amount needed to amortize over 10 years (principal plus interest) the decrease in plan liabilities as a result of the plan amendment. However, if a plan is fully funded without regard to the collectively bargained decrease in liabilities, no deduction is to be allowed. If a plan elects this provision, the amounts deductible in future years for contributions to the plan will be decreased (pursuant to regulations) by the amount required for a 10-year amortization of the collectively bargained decrease in liabilities.

A special rule is provided with respect to plans of regulated public utilities doing business in 40 States and furnishing certain telephone or other communications services which are rate regulated. (This rule also applies to plans of other companies which are members of a controlled group that includes such a public utility doing business in 40 States.) Under this provision, if the Secretary of the Treasury finds that the plan is a collectively bargained plan, the rules described above for deductions where there have been decreases in liabilities on account of plan amendments would apply to decreases in plan liabilities as a result of an increase in benefits under Title II of the Social Security Act.

Effective dates

In the case of new plans, the funding provisions are to apply to the first full plan year beginning after the date of enactment of the bill. For example, if a plan was established on October 1, 1974, but its plan year is a calendar year, the new provisions are to apply to the plan year beginning January 1, 1975.

Generally, in the case of plans existing on January 1, 1974, the new funding provisions are to become applicable for plan years beginning after December 31, 1975. In the case of collectively bargained plans (both single employer and multiemployer plans) existing on January 1, 1974, the effective date would be delayed until the termination of the contract existing on January 1, 1974, but not later than plan years beginning after December 31, 1980. Where an employer has plans which involve both collective bargaining unit employees and other employees, the effective dates applicable to collectively bargained plans are to govern if (on January 1, 1974) at least 25 percent of the

plan participants are members of the employee unit covered by the collectively bargained agreement. (This is described more fully in connection with the effective dates for participation.)

Where a qualified plan does not meet the funding requirements of existing law because of vesting or participation requirements made applicable by the substitute and where the funding requirements of the conference substitute do not become applicable until a later time than the vesting or participation requirements, then to the extent that failure to meet the funding requirements of existing law is attributable to these new vesting or participation requirements, no plan is to be disqualified in this interim period on the grounds of underfunding.

The effective date for the rules with respect to maximum deduction limits is the same as the effective date for the funding rules generally.

V. Fiduciary Responsibility (Secs. 401–414 and 2003 of the Bill and Sec. 4975 of the Internal Revenue Code)

House bill and Senate amendment

The House bill generally includes rules governing the responsibility of plan fiduciaries only in the labor provisions of the bill (title I). The labor provisions establish rules governing the basic responsibilities of plan fiduciaries, the structure of plan administration, and also establish certain transactions as "prohibited transactions." (Present law under the Internal Revenue Code has similar prohibited transaction rules, which were unchanged by the House bill.)

Under the House bill, all plan fiduciaries must act, with respect to the plan, in accordance with a "prudent man" rule. In addition, plan fiduciaries generally must diversify plan investments (with certain exceptions for profit-sharing plans, etc., that invest in employer securities) and must act for the exclusive benefit of the plan participants and beneficiaries. The House bill also provides that all plans must be in writing, that plan assets generally are to be held in trust, and that trustees generally are to have the exclusive authority to manage and control plan assets. However, asset management in certain circumstances may be delegated to qualified investment managers. The bill also provides that plan trustees may allocate their responsibilities if the plan so provides and that in this event generally only the persons to whom responsibilities have been allocated would be liable for a surcharge.

Under the House bill, fiduciaries generally are prohibited from dealing on behalf of a plan with persons known to be parties-in-interest unless the dealings are for adequate consideration. Also, the bill generally prohibits fiduciaries from dealing with plan assets for their own accounts, receiving consideration from other parties dealing with the plan in a transaction involving the plan, or acting in a transaction involving the plan on behalf of a person who is adverse to the plan.

Under the House bill, a fiduciary is to be personally liable for losses to the plan resulting from violations of the fiduciary responsibility rules.

The Senate amendment includes rules governing fiduciary responsibility in both the labor and tax provisions. The labor provisions of the amendment, as in the case of the House bill, deal with the basic

responsibility of fiduciaries, plan administrators, and structure; also and these provisions would establish certain transactions as prohibited transactions. Fiduciaries (and parties-in-interest) are to be personally liable under the labor provisions for losses sustained by a plan that result from a violation of these rules. The tax provisions of the amendment also establish prohibited transaction rules (which are nearly identical to the rules in the labor provisions) which are to be enforced through an excise tax on parties-in-interest.

The Senate amendment rules governing the basic responsibilities of plan fiduciaries (*e.g.*, acting with prudence and for the exclusive benefit of participants and beneficiaries) are similar to the rules of the House bill.

With respect to plan administration, the amendment does not require plan assets generally to be held in trust nor does it require that assets be administered by trustees. The amendment would, however, deem plan assets to be held in trust. Also, the Senate amendment does not include provisions similar to those of the House bill with respect to allocation of responsibilities among trustees.

Under both the labor and tax provisions of the Senate amendment, plan fiduciaries generally are prohibited from engaging in specified transactions with parties-in-interest whether or not these transactions are for adequate consideration. However, the amendment provides for administrative variances from these prohibitions if certain conditions are met, and also would provide statutory exemptions for, *e.g.*, paying reasonable compensation to parties-in-interest for services rendered to the plan which are necessary for the plan's operation. The amendment also would prohibit a fiduciary from dealing with the plan assets on his own account, receiving consideration from other parties dealing with the plan, and acting on behalf of a person adverse to the plan.

Fiduciary responsibility rules, in general

The conference substitute establishes rules governing the conduct of plan fiduciaries under the labor laws (title I) and also establishes rules governing the conduct of disqualified persons (who are generally the same people as "parties in interest" under the labor provisions) with respect to the plan under the tax laws (title II). This division corresponds to the basic difference in focus of the two departments. The labor law provisions apply rules and remedies similar to those under traditional trust law to govern the conduct of fiduciaries. The tax law provisions apply an excise tax on disqualified persons who violate the new prohibited transaction rules; this is similar to the approach taken under the present rules against self-dealing that apply to private foundations.

The labor provisions deal with the structure of plan administration, provide general standards of conduct for fiduciaries, and make certain specific transactions "prohibited transactions" which plan fiduciaries are not to engage in. The tax provisions include only the prohibited transaction rules and apply only to disqualified persons, not fiduciaries (unless the fiduciary is otherwise a disqualified person and the transaction involved him, or the fiduciary benefited from the transaction). To the maximum extent possible, the prohibited transaction rules are identical in the labor and tax provisions, so they will apply in

the same manner to the same transaction. (However, there are some differences, such as not prohibiting under the tax law an act to which the tax sanction cannot appropriately apply.)

Coverage of the labor provisions

The labor fiduciary responsibility rules generally apply to all employee benefit plans (both retirement plans and welfare plans) in or affecting interstate commerce. The usual exceptions for government plans, church plans (which do not elect to have the participation, vesting, funding, and insurance rules apply), workmen's compensation plans, and nonresident alien plans apply here as well as to the other parts of the labor provisions. In addition, the labor fiduciary rules do not apply to an unfunded plan primarily devoted to providing deferred compensation for a select group of management or highly compensated employees. For example, if a "phantom stock" or "shadow stock" plan were to be established solely for the officers of a corporation, it would not be covered by the labor fiduciary rules. Also, a deferred compensation arrangement solely for retiring partners (under sec. 736 of the Internal Revenue Code) is to be exempt from the fiduciary responsibility rules. Additionally, the fiduciary responsibility rules do not apply to a so-called excess benefit plan which is unfunded.

Since mutual funds are regulated by the Investment Company Act of 1940 and, since (under the Internal Revenue Code) mutual funds must be broadly held, it is not considered necessary to apply the fiduciary rules to mutual funds merely because plans invest in their shares. Therefore, the substitute provides that the mere investment by a plan in the shares of a mutual fund is not to be sufficient to cause the assets of the fund to be considered the assets of the plan. (However, a plan's assets will include the shares of a mutual fund held by the plan.)

The substitute also provides that a mutual fund is not to be considered a fiduciary or a party-in-interest merely because a plan invests in its shares, except that the mutual fund may be a fiduciary or party-in-interest if it acts in connection with a plan covering the employees of the investment company, the investment adviser, or its principal underwriter.

An insurance company also is not considered to hold plan assets if a plan purchases an insurance policy from it, to the extent that the policy provides payments guaranteed by the company. If the policy guarantees basic payments but other payments may vary with, *e.g.*, investment performance, then the variable part of the policy and assets attributable thereto are not to be considered as guaranteed, and are to be considered as plan assets subject to the fiduciary rules. (However, such assets need not be held in trust under the fiduciary responsibility rule.)

Additionally, it is understood that assets placed in a separate account managed by an insurance company are separately managed and the insurance company's payments generally are based on the investment performance of these particular assets. Consequently, insurance companies are to be responsible under the general fiduciary rules with respect to assets held under separate account contracts, and the assets of these contracts are to be considered as plan assets (but need not be

held in trust). However, to the extent that insurance companies place some of their own funds in these separate accounts to provide for contingencies, this separate account "surplus" is not to be subject to the fiduciary responsibility rules.

These rules are to apply with respect to insurance policies issued by an insurance company, or by an insurance service or insurance organization. The conferees understand that some companies that provide, *e.g.*, health insurance, are not technically considered as "insurance companies." It is intended that these companies are to be included within the terms "insurance service or insurance organization."

Structure of plan administration

Establishment of plan.—Under the labor provisions of the conference substitute, every covered employee benefit plan (both retirement and welfare plan) is to be established and maintained in writing. A written plan is to be required in order that every employee may, on examining the plan documents, determine exactly what his rights and obligations are under the plan. Also, a written plan is required so the employees may know who is responsible for operating the plan. Therefore, the plan document is to provide for the "named fiduciaries" who have authority to control and manage the plan operations and administration. A named fiduciary may be a person whose name actually appears in the document, or may be a person who holds an office specified in the document, such as the company president. A named fiduciary also may be a person who is identified by the employer or union, under a procedure set out in the document. For example, the plan may provide that the employer's board of directors is to choose the person who manages or controls the plan. In addition, a named fiduciary may be a person identified by the employers and union acting jointly. For example, the members of a joint board of trustees of a Taft-Hartley plan would usually be named fiduciaries.

Plan contents.—Under the labor provisions of the substitute, each plan is to provide a procedure for establishing a funding policy and method to carry out the plan objectives. This procedure is to enable the plan fiduciaries to determine the plan's short- and long-run financial needs and communicate these requirements to the appropriate persons. For example, with a retirement plan it is expected that under this procedure the persons who manage the plan will determine whether the plan has a short-run need for liquidity, (*e.g.*, to pay benefits) or whether liquidity is a long-run goal and investment growth is a more current need. This in turn is to be communicated to the persons responsible for investments, so that investment policy can be appropriately coordinated with plan needs. Also, the plan documents are to set out the basis for contributions to and payments from the plan. Thus, the plan is to specify what part (if any) of contributions are to come from employees and what part from employers. Also, it is to specify the basis on which payments are to be made to participants and beneficiaries.

It is customary for those who manage and control the plan to allocate their responsibilities and, within limits, designate others to carry out the daily management of the plan. The conference substitute establishes special rules which will enable fiduciaries to continue to allocate and delegate their responsibilities. However, alloca-

tion or delegation is to be allowed only if the plan provides for it (or provides procedures for it) in accordance with the terms of the substitute, as discussed below.

Each plan also is to provide a procedure for amendments and for identifying who can amend the plan. Additionally, following common practice, a plan may provide that a person may serve in more than one fiduciary capacity under the plan, including service both as administrator and trustee. As described below, the plan may also provide for the hiring of investment (and other) advisers and investment managers.

Establishment of trust.—The labor provisions of the substitute generally provide that all plan assets are to be held in trust by trustees and also provide that the trustees are to manage and control the plan assets. Also, the plan trustees are to be appointed in the plan or trust documents or appointed by a named fiduciary. However, in order that persons who act as trustees recognize their special responsibilities with respect to plan assets, trustees are to accept appointment before they act in this capacity.

If the plan provides that the trustees are subject to the direction of named fiduciaries, then the trustees are not to have the exclusive management and control over the plan assets, but generally are to follow the directions of the named fiduciary. Therefore, if the plan sponsor wants an investment committee to direct plan investments, he may provide for such an arrangement in the plan. In addition, since investment decisions are basic to plan operations, members of such an investment committee are to be named fiduciaries. (For example, the plan could provide that the investment committee is to consist of the persons who serve as the president, vice-president for finance, and comptroller of the employer.) If the plan so provides, the trustee who is directed by an investment committee is to follow that committee's directions unless it is clear on their face that the actions to be taken under those directions would be prohibited by the fiduciary responsibility rules of the bill or would be contrary to the terms of the plan or trust.

In addition (as discussed below), to the extent that the management of plan assets is delegated to a special category of persons called "investment managers", the trustee is not to have exclusive discretion to manage and control the plan assets, nor would the trustee be liable for any act of such investment manager.

A trust is not to be required in the case of plan assets which consist of insurance (including annuity) contracts or policies issued by an insurance company qualified to do business in a State (or the District of Columbia). The same exemption will apply to the new section 403(b) custodial account arrangement involving investment in mutual funds, since these are treated as amounts contributed for an annuity contract under the tax law. Although these contracts need not be held in trust, nevertheless, the person who holds the contract is to be a fiduciary and is to act in accordance with the fiduciary rules of the substitute with respect to these contracts. For example, this person is to prudently take and keep exclusive control of the contracts, and is to use prudent care and skill to preserve this property.

To the extent that plan assets are held by an insurance company they need not be held in trust. However, to the extent the substitute

treats assets held by an insurance company as "plan assets", the insurance company is to be treated as a fiduciary with respect to the plan, and is to meet the fiduciary standards of the conference substitute.

The labor provisions of the substitute also provide that the assets of H.R. 10 plans (plans for the self-employed and their employees) and individual retirement accounts need not be held in trust to the extent they are held in custodial accounts qualified under the Internal Revenue Code. It is recognized that the substitute generally amends the Internal Revenue Code to make use of custodial accounts more available for all plans, and that this is expected to decrease the cost of asset administration for many plans. Custodial accounts also may be used by all plans under the labor provisions. However, a plan (which is not exempt from the trust requirements) that uses a custodial account also will have to have a trustee (who can be the plan administrator or sponsor). The plan trustee will have the responsibility for investment decisions with regard to the assets and the custodian will (as under present practice) merely retain custody of these assets. Since the plan sponsor could be the trustee, the costs of plan administration will remain as low as with the present custodial account arrangements, but the plan also would have a responsible person in charge of investment decisions.

A trust also is not to be required for a plan not subject to the participation, vesting and funding provisions of title I, and the plan termination insurance provisions, to the extent provided by the Secretary of Labor.

Liability for breach of co-fiduciary responsibility, in general.—Under the labor provisions of the conference substitute, a fiduciary of a plan is to be liable for the breach of fiduciary responsibility by another fiduciary of the plan if he knowingly participates in a breach of duty committed by the other fiduciary. Under this rule, the fiduciary must know the other person is a fiduciary with respect to the plan, must know that he participated in the act that constituted a breach, and must know that it was a breach. For example, A and B are co-trustees, and the terms of the trust provide that they are not to invest in, *e.g.*, commodity futures. If A suggests to B that B invest part of the plan assets in commodity futures, and if B does so, A, as well as B, is to be liable for the breach.

In addition, a fiduciary is to be liable for the breach of fiduciary responsibility by another fiduciary of the plan, if he knowingly undertakes to conceal a breach committed by the other. For the first fiduciary to be liable, he must know that the other is a fiduciary with regard to the plan, must know of the act, and must know that it is a breach. For example, A and B are co-trustees, and B invests in commodity futures in violation of the trust instrument. If B tells his co-trustee A of this investment, A would be liable with B for breach of fiduciary responsibility if he concealed this investment.

Also, if a fiduciary knows that another fiduciary of the plan has committed a breach, and the first fiduciary knows that this is a breach, the first fiduciary must take reasonable steps under the circumstances to remedy the breach. In the second example above, if A has the authority to do so, and if it is prudent under the circumstances, A may be required to dispose of the commodity futures acquired by B. Al-

ternatively, the most appropriate steps in the circumstances may be to notify the plan sponsor of the breach, or to proceed to an appropriate Federal court for instructions, or bring the matter to the attention of the Secretary of Labor. The proper remedy is to be determined by the facts and circumstances of the particular case, and it may be affected by the relationship of the fiduciary to the plan and to the co-fiduciary, the duties and responsibilities of the fiduciary in question, and the nature of the breach.

A fiduciary also is to be liable for the loss caused by the breach of fiduciary responsibility by another fiduciary of the plan if he enables the other fiduciary to commit a breach through his failure to exercise prudence (or otherwise comply with the basic fiduciary rules of the bill) in carrying out his specific responsibilities. For example, A and B are co-trustees and are to jointly manage the plan assets. A improperly allows B to have the sole custody of the plan assets and makes no inquiry as to his conduct. B is thereby enabled to sell the property and to embezzle the proceeds. A is to be liable for a breach of fiduciary responsibility.

Allocation of duties of co-trustees.—Under the conference substitute, if the plan assets are held by co-trustees, then each trustee has the duty to manage and control those assets. For example, shares of stock held in trust by several trustees generally should be registered in the name of all the trustees, or in the name of the trust. In addition, each trustee is to use reasonable care to prevent his co-trustee from committing a breach of fiduciary duty.

Although generally each trustee must manage and control the plan assets, nevertheless, under the substitute specific duties and responsibilities with respect to the management of plan assets may be allocated among co-trustees by the trust instrument. For example, the trust instrument may provide that trustee A is to manage and control one-half of the plan assets, and trustee B is to manage and control the other half of the plan assets.

Also, the trust instrument may provide that specific duties may be allocated by agreement among the co-trustees. In this case, however, the conferees intend that the trust instrument is to specifically delineate the duties that may be allocated by agreement of the co-trustees and is to specify a procedure for such allocation. Also, the trustees must act prudently in implementing such an allocation procedure.

If duties are allocated among co-trustees in accordance with the substitute, a trustee to whom duties have not been allocated is not to be liable for any loss that arises from acts or omissions of the co-trustee to whom such responsibilities have been allocated.

However, a co-trustee will be liable notwithstanding allocation if he individually fails to comply with the other fiduciary standards. For example, a co-trustee would be liable on account of his own acts if he did not act in accordance with the prudent man standard and thereby caused the plan to suffer a loss. In addition, the general rules of co-fiduciary liability are to apply. Therefore, for example, if a trustee had knowledge of a breach by a co-trustee, he would be liable unless he made reasonable efforts to remedy the breach.

Under the substitute, it is made clear that if plan assets are held in separate trusts a trustee of one trust is not responsible as a co-trustee of the other trust.

The conferees understand that under certain circumstances, trustees (and other fiduciaries) in discharging their responsibilities in accordance with the prudent man rule will hire agents to perform ministerial acts. In this case, the liability of the trustees (and other fiduciaries) for acts of their agents is to be established in accordance with the prudent man rule.

Allocation and delegation of duties other than the management of plan assets.—The substitute also provides for the allocation and delegation by fiduciaries of duties that do not involve the management and control of plan assets.[1] However, in order that participants and beneficiaries, etc., may readily determine who is responsible for managing a plan, the substitute generally provides that only "named fiduciaries" will be able to allocate or delegate their responsibilities.

Under the substitute, if the plan so provides, named co-fiduciaries may allocate their specific responsibilities among themselves, and named fiduciaries may delegate all or part of their duties (which do not involve asset management) to others. The substitute also provides that upon proper allocation or delegation fiduciaries will not be liable for the acts or omissions of the persons to whom duties have been allocated or delegated.

Allocation or delegation (and the consequent elimination of liability) can only occur under specific circumstances. The plan must specifically allow such allocation or delegation, and the plan must expressly provide a procedure for it. For example, the plan may provide that delegation may occur only with respect to specified duties, and only on the approval of the plan sponsor or on the approval of the joint board of trustees of a Taft-Hartley plan. Also, in implementing the procedures of the plan, plan fiduciaries must act prudently and in the interests of participants and beneficiaries. The fiduciaries also must act in this manner in choosing the person to whom they allocate or delegate their duties. Additionally, they must act in this manner in continuing the allocation or delegation of their duties.

In order to act prudently in retaining a person to whom duties have been delegated, it is expected that the fiduciary will periodically review this person's performance. Depending upon the circumstances, this requirement may be satisfied by formal periodic review (which may be by all the named fiduciaries who have participated in the delegation or by a specially designated review committee), or it may be met through day-to-day contact and evaluation, or in other appropriate ways. Since effective review requires that a person's services can be terminated, it may be necessary to enter into arrangements which the fiduciary can promptly terminate (within the limits of the circumstances).

Even though a named fiduciary has properly delegated his duties in accordance with the substitute, he may still be liable for the acts of a co-fiduciary if he breaches the general rules of co-fiduciary liability by, *e.g.*, knowingly concealing a breach of a co-fiduciary.

Investment managers, investment committees, etc.—Under the substitute, if the plan so provides, a person who is a named fiduciary with respect to the control or management of plan assets may appoint

[1] For example, these rules would govern the allocation or delegation of duties with respect to payment of benefits.

a qualified investment manager to manage all or part of the plan assets. (However, in choosing an investment manager, the named fiduciary must act prudently and in the interests of participants and beneficiaries, and also must act in this manner in continuing the use of an investment manager.) In this case, the plan trustee would no longer have responsibility for managing the assets controlled by the qualified investment manager, and the trustee would not be liable for the acts or omissions of the investment manager. Also, as long as the named fiduciary had chosen and retained the investment manager prudentially, the named fiduciary would not be liable for the acts or omissions of the manager. Under the substitute, a qualified investment manager may be an investment adviser registered under the Investment Advisers Act of 1940, a bank (as defined in that Act), or an insurance company qualified to perform investment management services under State law in more than one State. To be qualified, the investment manager also must acknowledge in writing that he is a plan fiduciary.

As described above (*Establishment of trust*) the plan may also provide that the trustee is to be subject to the direction of named fiduciaries with respect to investment decisions. In this case, if the trustee properly follows the instructions of the named fiduciaries, the trustee generally is not to be liable for losses which arise out of following these instructions. (The named fiduciaries, however, would be subject to the usual fiduciary responsibility rules and would be subject to liability on breach of these rules.)

In addition, a plan may provide that named fiduciaries (or fiduciaries to whom duties have been properly delegated) may employ investment and other advisers. However, a fiduciary cannot be relieved of his own responsibilities merely because he follows the advice of such a person. (Also, investment advisers would be fiduciaries under the substitute.)

Basic fiduciary rules

Prudent man standard.—The substitute requires that each fiduciary of a plan act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character and with like aims. The conferees expect that the courts will interpret this prudent man rule (and the other fiduciary standards) bearing in mind the special nature and purpose of employee benefit plans.

Under the Internal Revenue Code, qualified retirement plans must be for the exclusive benefit of the employees and their beneficiaries. Following this requirement, the Internal Revenue Service has developed general rules that govern the investment of plan assets, including a requirement that cost must not exceed fair market value at the time of purchase, there must be a fair return commensurate with the prevailing rate, sufficient liquidity must be maintained to permit distributions, and the safeguards and diversity that a prudent investor would adhere to must be present. The conferees intend that to the extent that a fiduciary meets the prudent man rule of the labor provisions, he will be deemed to meet these aspects of the exclusive benefit requirements under the Internal Revenue Code.

Under the conference substitute, plan fiduciaries also must act in accordance with plan documents and instruments to the extent that they are consistent with the requirements established in the bill.

Exclusive benefit for employees.—Under the conference substitute each fiduciary of a plan must act solely in the interests of the plan's participants and beneficiaries and exclusively to provide benefits to these participants and beneficiaries (or to pay reasonable plan administrative costs).

Since the assets of the employee benefit plan are to be held for the exclusive benefit of participants and beneficiaries, plan assets generally are not to inure to the benefit of the employer. However, the conference substitute allows an employer's contributions to be returned to him in certain limited situations.

An employer's contributions can be returned within one year after they are made to the plan, if made as a mistake of fact. (For example, an employer may have made an arithmetical error in calculating the amounts that were to be contributed to the plan.) Also, if an employer contributes to a plan on the condition that the plan is tax-qualified or on the condition that a current tax deduction is allowed for the contribution, and it is later determined that the plan is not qualified (or the deduction is not allowed), the contribution can be returned if the plan provides for it. In this case, the contribution can be returned within one year after the disallowance of qualification or deduction. With regard to a disallowance of deductions, contributions can be returned only to the extent of the amount for which a deduction is denied. (For example, if $100 is contributed on the condition it is deductible and $20 is later determined not to be deductible, only $20 could be returned, and not $100.) Also with respect to qualification, contributions can be returned on the denial of initial or of continuing qualification (in the case of contributions made after *e.g.*, a plan amendment).

An employer's contributions under an H.R. 10 plan also can be returned to the employer to the extent permitted to avoid payment of an excise tax on excess contributions.

Under the labor (but not the tax) provisions of the substitute, the transfer or distribution of the assets of a welfare plan on termination of the plan is to be in accordance with the terms of the plan except as otherwise prescribed by regulations of the Secretary of Labor. It is intended that the Secretary of Labor would allow the terms of the plan (or in the case of a plan subject to collective bargaining, the collective bargaining agreement) to govern such distribution or transfer of assets except to the extent that implementation of the terms of the plan or agreement would unduly impair the accrued benefits of the plan participants or would not be in the best interests of the plan participants. Where such distribution or transfer is incidental to the merger of one multiemployer plan with another, it is expected that the Secretary of Labor would disallow the distribution or transfer only where the merger would reasonably be expected to jeopardize the ability of the plan to meet its obligations or would otherwise not be in the best interests of the plan participants.

Also, under the labor (but not the tax) provisions of the substitute, on termination of a pension plan to which the plan termination insurance provisions do not apply, the assets of the plan are to be allocated

in accordance with the provisions under the plan termination insurance title of the Act governing such allocation (as if the plan were covered by termination insurance), except as otherwise provided in regulations prescribed by the Secretary of Labor. It is intended that regulations by the Secretary of Labor in this case would be similar to the regulations governing the distribution of assets on termination of a welfare plan as described above.

Diversification requirement.—The substitute requires fiduciaries to diversify plan assets to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. It is not intended that a more stringent standard of prudence be established with the use of the term "clearly prudent." Instead, by using this term it is intended that in an action for plan losses based on breach of the diversification requirement, the plaintiff's initial burden will be to demonstrate that there has been a failure to diversify. The defendant then is to have the burden of demonstrating that this failure to diversify was prudent. The substitute places these relative burdens on the parties in this matter, because the basic policy is to require diversification, and if diversification on its face does not exist, then the burden of justifying failure to follow this general policy should be on the fiduciary who engages in this conduct.

The degree of investment concentration that would violate this requirement to diversify cannot be stated as a fixed percentage, because a prudent fiduciary must consider the facts and circumstances of each case. The factors to be considered include (1) the purposes of the plan; (2) the amount of the plan assets; (3) financial and industrial conditions; (4) the type of investment, whether mortgages, bonds or shares of stock or otherwise; (5) distribution as to geographical location; (6) distribution as to industries; (7) the dates of maturity.

A fiduciary usually should not invest the whole or an unreasonably large proportion of the trust property in a single security. Ordinarily the fiduciary should not invest the whole or an unduly large proportion of the trust property in one type of security or in various types of securities dependent upon the success of one enterprise or upon conditions in one locality, since the effect is to increase the risk of large losses. Thus, although the fiduciary may be authorized to invest in industrial stocks, he should not invest a disproportionate amount of the plan assets in the shares of corporations engaged in a particular industry. If he is investing in mortgages on real property he should not invest a disproportionate amount of the trust in mortgages in a particular district or on a particular class of property so that a decline in property values in that district or of that class might cause a large loss.

The assets of many pension plans are managed by one or more investment managers. For example, one investment manager, A, may be responsible for 10 percent of the assets of a plan and instructed by the named fiduciary or trustee to invest solely in bonds; another investment manager, B, may be responsible for a different 10 percent of the assets of the same plan and instructed to invest solely in equities. Such arrangements often result in investment returns which are quite favorable to the plan, its participants, and its beneficiaries. In these circumstances, A would invest solely in bonds in accordance with his instruc-

tions and would diversify the bond investments in accordance with the diversification standard, the prudent man standard, and all other provisions applicable to A as a fiduciary. Similarly, B would invest solely in equities in accordance with his instructions and these standards. Neither A nor B would incur any liability for diversifying assets subject to their management in accordance with their instructions.

The conferees intend that, in general, whether the plan assets are sufficiently diversified is to be determined by examining the ultimate investment of the plan assets. For example, the conferees understand that for efficiency and economy plans may invest all their assets in a single bank or other pooled investment fund. but that the pooled fund itself could have diversified investments. It is intended that, in this case, the diversification rule is to be applied to the plan by examining the diversification of the investments in the pooled fund. The same is true with respect to investments in a mutual fund. Also, generally a plan may be invested wholly in insurance or annuity contracts without violating the diversification rules, since generally an insurance company's assets are to be invested in a diversified manner.

(With respect to special rules regarding diversification of assets and investment in employer securities, etc., by certain individual account plans, see "Employer securities and employer real property," below.)

Certain individual account plans.—Under the substitute, a special rule is provided for individual account plans where the participant is permitted to. and in fact does, exercise independent control over the assets in his individual account. In this case, the individual is not to be regarded as a fiduciary and other persons who are fiduciaries with respect to the plan are not to be liable for any loss that results from the exercise and control by the participant or beneficiary. Therefore, if the participant instructs the plan trustee to invest the full balance of his account in, *e.g.*, a single stock, the trustee is not to be liable for any loss because of a failure to diversify or because the investment does not meet the prudent man standards. However, the investment must not contradict the terms of the plan, and if the plan on its face prohibits such investments, the trustee could not follow the instructions and avoid liability.

The conferees recognize that there may be difficulties in determining whether the participant in fact exercises independent control over his account. Consequently, whether participants and beneficiaries exercise independent control is to be determined pursuant to regulations prescribed by the Secretary of Labor. The conferees expect that the regulations will provide more stringent standards with respect to determining whether there is an independent exercise of control where the investments may inure to the direct or indirect benefit of the plan sponsor since, in this case participants might be subject to pressure with respect to investment decisions. (Because of the difficulty of ensuring that there is independence of choice in an employer established individual retirement account, it is expected that the regulations will generally provide that sufficient independent control will not exist with respect to the acquisition of employer securities by participants and beneficiaries under this type of plan.) In addition, the conferees expect that the regulations generally will require that for there to be

independent control by participants, a broad range of investments must be available to the individual participants and beneficiaries.

Transfer of assets outside of the United States.—In order to prevent "runaway assets," the labor provisions of the substitute generally prohibit a fiduciary from transfering or maintaining the indicia of ownership of any plan assets outside the jurisdiction of the district courts of the United States. However, such a transaction may be permitted under regulations issued by the Secretary of Labor.

It is recognized that investment in securities of foreign companies and governments have been and may well continue to be in the best interests of plan participants in appropriate circumstances and with proper safeguards, and that the physical transfer of securities back and forth overseas may involve unduly high cost and impose unreasonable limitations on the investment of plan funds in such securities. The basic objective of the requirement that the indicia of ownership remain within the jurisdiction of a United States District Court is to preclude frustration of adequate fiduciary supervision and remedies for breach of trust. However, the risk of misappropriation of plan assets or their removal beyond the effective process of an American court is minimal where the assets are under the management or control of a bank, trust company or similar institution which is subject to adequate regulation and examination by State or Federal supervisory agencies. Such an institution would be responsive to legal process and to the traditional principles of fiduciary responsibility under trust law. Accordingly, it is contemplated that the Secretary of Labor will, as a general rule, grant an exemption to such institutions meeting standards that would assure the safety of plan assets. It is further contemplated that the Secretary will issue temporary regulations authorizing institutions with a history of investing pension funds in foreign securities as a matter of policy to continue to do so pending formal action on an application for exemption.

Prohibited transactions

In general.—The conference substitute prohibits plan fiduciaries and parties-in-interest from engaging in a number of specific transactions. Prohibited transaction rules are included both in the labor and tax provisions of the substitute. Under the labor provisions (title I), the fiduciary is the main focus of the prohibited transaction rules. This corresponds to the traditional focus of trust law and of civil enforcement of fiduciary responsibilities through the courts. On the other hand, the tax provisions (title II) focus on the disqualified person. This corresponds to the present prohibited transaction provisions relating to private foundations.[2]

The prohibited transactions, and exceptions therefrom, are nearly identical in the labor and tax provisions. However, the labor and tax provisions differ somewhat in establishing liability for violation of prohibited transactions. Under the labor provisions, a fiduciary will only be liable if he knew or should have known that he engaged in a prohibited transaction. Such a knowledge requirement is not included

[2] Generally, the substitute defines a prohibited transaction as the same type of transaction that constitutes prohibited self-dealings with respect to private foundations, with differences that are appropriate in the employee benefit area. As with the private foundation rules, under the substitute, both direct and indirect dealings of the proscribed type are prohibited.

in the tax provisions. This distinction conforms to the distinction in present law in the private foundation provisions (where a foundation's manager generally is subject to a tax on self-dealing if he acted with knowledge, but a disqualified person is subject to tax without proof of knowledge).

Under the labor provisions a fiduciary will be liable for losses to a plan from a prohibited transaction in which he engaged if he would have known the transaction involving the particular party-in-interest was prohibited if he had acted as a prudent man. The type of investigation that will be needed to satisfy the test of prudence will depend upon the particular facts and circumstances of the case. In the case of a significant transaction, generally for a fiduciary to be prudent he must make a thorough investigation of the other party's relationship to the plan to determine if he is a party-in-interest. In the case of a normal and insubstantial day-to-day transaction, it may be sufficient to check the identity of the other party against a roster of parties-in-interest that is periodically updated.

In general, it is expected that a transaction will not be a prohibited transaction (under either the labor or tax provisions) if the transaction is an ordinary "blind" purchase or sale of securities through an exchange where neither buyer nor seller (nor the agent of either) knows the identity of the other party involved. In this case, there is no reason to impose a sanction on a fiduciary (or party-in-interest) merely because, by chance, the other party turns out to be a party-in-interest (or plan).

The labor prohibitions affect "parties-in-interest", and the tax prohibitions affect "disqualified persons." The two terms are substantially the same in most respects, but the labor term includes a somewhat broader range of persons, as described below.

Coverage.—The prohibited transaction rules under the labor provisions apply to all plans to which the general labor fiduciary rules apply, as described above. The tax law prohibited transaction rules apply to all qualified retirement plans (under secs. 401, 403(a), and 405(a) of the Internal Revenue Code) and to all qualified individual retirement accounts, individual retirement annuities, and individual retirement bonds (under secs. 408 and 409 of the Code). In addition, the tax law rules are to continue to apply even if the plan, etc., should later lose its tax qualification.

The tax law prohibited transaction provisions follow the labor provisions with respect to whether the assets of an insurance company or mutual fund are to be considered the assets of a plan. Also, the tax provisions exclude from the new prohibited transaction rules government plans, and church plans which have not elected coverage under the new participation, vesting, funding and insurance provisions. (The latter plans, if they are qualified plans, will be subject to present law.)

Party-in-interest transactions.—Under the substitute, the direct or indirect sale, exchange, or leasing of any property between the plan and a party-in-interest [3] (with exceptions subsequently noted) is a prohibited transaction. Under this rule, the transaction is pro-

[3] Hereafter, the term "party-in-interest" will include the term "disqualified person" unless otherwise indicated.

hibited whether or not the property involved is owned by the plan or party-in-interest, and the prohibited transaction includes sales, etc., from the party-in-interest to the plan, and also from the plan to the party-in-interest. Also, following the private foundation rules of the tax law, a transfer of property by a party-in-interest to a plan is treated as a sale or exchange if the property is subject to a mortgage or a similar lien which the party-in-interest placed on the property within 10 years prior to the transfer to the plan or if the plan assumes a mortgage or similar lien placed on the property by a party in interest within 10 years prior to the transfer. This rule prevents circumvention of the prohibition on sale by mortgaging the property before transfer to the plan.

The conference substitute also generally prohibits the direct or indirect lending of money or other extension of credit between a plan and parties-in-interest. For example, a prohibited transaction generally will occur if a loan to a plan is guaranteed by a party-in-interest, unless it comes within the special exemption for employee stock ownership plans.

It is intended that prohibited loans include the acquisition by the plan of a debt instrument (such as a bond or note) which is an obligation of a party-in-interest. (However, the transition rules described below establish special rules for certain debt instruments held by a plan before July 1, 1974.) Similarly, it is intended that it would be a prohibited transaction (in effect a loan by the plan to the employer) if the employer funds his contributions to the plan with his own debt obligations.

With certain exceptions described below, the direct or indirect furnishing of goods or services or facilities between a plan and a party-in-interest also is prohibited. This would apply, for example, to the furnishing of personal living quarters to a party-in-interest.

The substitute prohibits the direct or indirect transfer of any plan income or assets to or for the benefit of a party-in-interest. It also prohibits the use of plan income or assets by or for the benefit of any party-in-interest. As in other situations, this prohibited transaction may occur even though there has not been a transfer of money or property between the plan and a party-in-interest. For example, securities purchases or sales by a plan to manipulate the price of the security to the advantage of a party-in-interest constitutes a use by or for the benefit of a party-in-interest of any assets of the plan.

The labor provisions and the tax provisions differ slightly on the wording with respect to this latter prohibition. The labor provision prohibits such use of the plan's "assets", and the tax provision prohibits use of the plan's "income or assets". (This same difference appears with respect to other prohibited transactions, as well.) The conferees intend that the labor and tax provisions are to be interpreted in the same way and both are to apply to income and assets. The different wordings are used merely because of different usages in the labor and tax laws. In addition, even though the term "income" is used in the tax law, it is intended that this is not to imply in any way that investment in growth assets (which may provide little current income) is to be prohibited where such investment would otherwise meet the prudent man and other rules of the substitute.

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Since the subsitute prohibits both direct and indirect transactions, it is expected that where a mutual fund, *e.g.*, acquires property from a party-in-interest as part of the arrangement under which the plan invests or retains its investment in the mutual fund, this is to be a prohibited transaction.

Employer securities and employer real property.—The labor provisions also generally prohibit the direct or indirect acquisition by the plan (or holding by the plan) of securities of the employer or real property leased to the employer, except if otherwise allowed. This prohibition (and the exceptions to it) is described in detail below.

Additional prohibitions.—The substitute generally prohibits a fiduciary from dealing with the income or assets of a plan in his own interest or for his own account. However, this does not prohibit the fiduciary from dealings where he has an account in the plan and the dealings apply to all plan accounts without discrimination.

The substitute also prohibits a fiduciary from receiving consideration for his own personal account from any party dealing with the plan in connection with the transaction involving the income or assets of the plan. This prevents, *eg.*, "kickbacks" to a fiduciary.

In addition, the labor provisions (but not the tax provisions) prohibit a fiduciary from acting in any transaction involving the plan on behalf of a person (or representing a party) whose interests are adverse to the interests of the plan or of its participants or beneficiaries. This prevents a fiduciary from being put in a position where he has dual loyalties, and, therefore, he cannot act exclusively for the benefit of a plan's participants and beneficiaries. (This prohibition is not included in the tax provisions, because of the difficulty in determining an appropriate measure for an excise tax.)

Administrative exemptions or variances.—The conferees recognize that some transactions which are prohibited (and for which there are no statutory exemptions) nevertheless should be allowed in order not to disrupt the established business practices of financial institutions which often performs fiduciary functions in connection with these plans consistent with adequate safeguards to protect employee benefit plans. For example, while brokerage houses generally would be prohibited from providing, either directly or through affiliates, both discretionary investment management and brokerage services to the same plan, the conferees expect that the Secretary of Labor and Secretary of the Treasury would grant a variance with respect to these services (and other services traditionally rendered by such institutions), provided that they can show that such a variance will be administratively feasible and that the type of transaction for which an exemption is sought is in the interest of and protective of the rights of plan participants and beneficiaries. Thus, variances might be granted to brokers or their affiliates to act as investment managers if the Secretary determines that such arrangements are in the interests of plan participants and beneficiaries and that satisfactory safeguards are provided, including *e.g.*, such protections as the monitoring of the investment manager's decisions by a person with appropriate investment experience, as specified by the Secretaries, who is not affiliated with the broker. The conferees did not grant a statutory exemption to brokers for this type of multiple service because of the difficulty of establishing

precise statutory standards for protecting against potential abuses. The conferees note that the general issue of institutional investment management by brokers is under consideration in separate legislation, and expect that any action taken by the Secretaries on requests for variances under this Act will be consistent with the outcome of such legislation.

In addition, the conferees recognize that some individual transactions between a plan and party-in-interest may provide substantial independent safeguards for the plan participants and beneficiaries and may provide substantial benefit to the community as a whole, so that the transaction should be allowed under a variance. For example, it is understood that the pension plan of a major corporation with its principal office in Dayton, Ohio, has become committed to invest in a joint venture that will own an office building in a downtown redevelopment area in Dayton. This building is to be a key element of the redevelopment project. The joint venture will lease a portion of this building to the employer that established and maintained this pension plan. Under the general rules, this would be a prohibited indirect lease between the plan and a party-in-interest. However, it is understood that the transaction has substantial safeguards that ensure that the transaction will inure to the benefit of the plan participants and beneficiaries. For example, there are other major investors in the joint venture at this time so the joint venture will seek an adequate rate of return. Additionally, it is understood that the building has another major tenant and the terms of the lease for this tenant and for the employer are substantially identical. Furthermore, it is understood that the rental under these leases is generally higher than the rental for similar space now available in the area. Also, the City of Dayton will have a major investment in the land (and in a superstructure), so that the City will have an independent financial interest in ensuring that the transaction is financially sound.

Under this transaction, each party in the joint venture is to share in profits and losses in proportion to its capital contribution. Therefore, this is not a "tax shelter" transaction with an attempted shift of early period losses away from a tax-exempt entity to taxable entities. Also, it is understood that while the joint venture will borrow to finance the acquisition of the building, neither the joint venture nor the plan (nor any other joint venturer) is to be "personally liable" on the mortgage debt. Therefore, if the transaction were to fail, the plan's liability would be limited to the funds advanced to the joint venture.

It is expected that in this situation, because of the substantial safeguards for the plan and its participants and beneficiaries, because of the lack of "tax abuse" aspects, because the transaction became binding before the conferees' decisions were announced, and because of the importance of the project to the entire community of Dayton, Ohio, that the Secretary of the Treasury and Secretary of Labor will grant a variance to the transaction for its whole term.

Under the substitute, variances may be conditional or unconditional and may exempt a transaction from all or part of the prohibited transaction rules. In addition, variances may be for a particular transaction or for a class of transactions, and may be allowed pursuant to rulings or regulations. A variance from the prohibited transaction rules is to

have no effect with respect to the basic fiduciary responsibility rules requiring prudent action, diversification of investments, actions exclusively for the benefit of participants and beneficiaries, etc. (This is the case with respect to all statutory exemptions from the prohibited transaction rules as well.)

Under the substitute, the Secretary of Labor and the Secretary of the Treasury each must establish a procedure for allowing variances, but neither the Secretary of Labor nor the Secretary of the Treasury is to be required to grant a variance. Variances are to be granted only when each Secretary separately determines that the transaction in question is an appropriate case for a variance. Thus, for example, the Secretary of Labor may refuse to grant a variance if the transaction would constitute an abuse of the labor laws, even though the Secretary of the Treasury may be willing to grant a variance in the particular situation. Similarly, the Secretary of the Treasury may, for example, refuse to grant a variance if the transaction would constitute a tax abuse even though the Secretary of Labor may be willing to grant a variance in the same situation.

In addition, variances are not to be allowed unless each Secretary finds that the transaction is in the interests of the plan and its participants and beneficiaries, that it does not present administrative problems, and that adequate safeguards are provided for participants and beneficiaries.

Although the Secretary of Labor and the Secretary of the Treasury are to separately determine whether a variance is to be provided, they are to coordinate their activities. It is expected that the Secretaries of Labor and Treasury will develop an administrative procedure to allow one application for a variance and that the two departments will coordinate their activities with respect to this single application to prevent unneeded delays and duplication of effort by the applicant.

Before allowing a variance, adequate notice (including publication in the Federal Register) is to be given interested persons, who are to have an opportunity to present their views. In the case of a variance from the prohibitions against a fiduciary dealing with plan assets for his own account, acting on behalf of an adverse party to the plan, or receiving consideration for his personal account, there is to be a hearing and a determination on the record that the conditions required for granting a variance are met. (However, the Secretary of the Treasury may accept the record of a Department of Labor hearing, if he wishes, and make his determination with respect to the variance on the facts presented in that record.)

Exemption for loans to participants and beneficiaries.—Following current practice, the substitute does not prohibit a loan by a plan to a participant or beneficiary in certain circumstances. To be permitted, such loans must be made in accord with specific provisions in the plan governing such loans. In addition, a reasonable interest rate must be charged and the loan must be adequately secured. Such loans must be made available to all participants on a reasonably equivalent basis. Consequently, the plan could not unreasonably discriminate between applicants on the basis of, e.g., age or sex; but the plan could make distinctions on the basis of, e.g., credit worthiness or financial need. Also, such loans cannot be made available to highly-compensated employees in an amount greater than the amount available to other

employees. The conferees intend that this will allow a plan to lend the same percentage of a person's vested benefits to participants with both large and small amounts of accrued vested benefits. (However, the percentage is to be consistent with the requirements of adequate security.) The conferees also intend that a plan may provide that the same dollar amounts may be loaned to participants and beneficiaries without regard to the amount of their vested benefits if adequate security is otherwise provided. For example, a plan could provide for loans to participants and beneficiaries in an amount up to, *e.g.*, $30,000 to buy a house (even if the $30,000 is greater than the amount of the participant's or beneficiary's vested benefits) if the loan is adequately secured by, *e.g.*, a first mortgage on the house.

Exemption for services, etc.—The substitute allows a party-in-interest to furnish to a plan office space, legal services, accounting services, or other similar services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid for these services, etc. It is expected that such arrangements will allow the plan to terminate the services, etc., on a reasonably short notice under the circumstances so the plan will not become locked into an arrangement that may become disadvantageous. It is also expected that the compensation arrangements will allow for changes so the plan will not be locked into a disadvantageous price.

The substitute also specifically allows the plan to pay a fiduciary or other party-in-interest reasonable compensation (or reimbursement of expenses) for services rendered to the plan if the services are reasonable and necessary. However, to prevent double payment, this does not apply with regard to a fiduciary who is receiving full-time pay from an employer or association of employers (with employees covered by the plan) or from a union (with members covered by the plan), except for the reimbursement of expenses properly and actually incurred and not otherwise reimbursed.

The substitute also makes it clear that a party-in-interest may serve as a fiduciary in addition to being an officer, employee, agent or other representative of a party-in-interest.

Exemption for loans to employee stock ownership plans.—Under the substitute, certain loans or extensions of credit from a party-in-interest to an employee stock ownership plan are not to be prohibited. The conferees understand that it is common practice for these plans to purchase the employer's stock from major shareholders (or from the employer). The proceeds to pay for the purchase often are obtained by the plan from an unrelated lender with a guarantee of repayment by the shareholder. In this case, the substitute does not prohibit the party-in-interest from guaranteeing the loan (or from providing his assets as collateral for the loan). In addition, the conferees understand that it is common practice for a party-in-interest to sell his stock in the employer to these plans and take back a purchase money note from the plan. The substitute also does not prohibit such a loan if the only collateral given by the plan for the loan consists of qualifying employer's securities.

These exceptions to the prohibited transaction rules are to be allowed if the transaction is for the benefit of the plan participants and beneficiaries (and, not, e.g., primarily to benefit the party-in-interest

who is selling the stock), and if the interest rate charged on the loan to the plan remains at not more than a reasonable interest rate.

Although these transactions normally are for the benefit of plan participants and beneficiaries, the conferees recognize that there may be potential problems. For example, the interest rate should not be too high and the purchase price of the stock from the party-in-interest should not be too high, so that plan assets might be drained off. Also, the terms of the note between the party-in-interest and the plan should not allow the party-in-interest to call the note at his convenience, which might put undue financial strain on the plan. Because of such potential problems, the conferees intend that all aspects of these transactions will be subject to special scrutiny by the Department of Labor and Internal Revenue Service to ensure that they are primarily for the benefit of plan participants and beneficiaries.

This exception from the prohibited transaction rules is to be available only for employee stock ownership plans and not for other plans. The conferees understand that the basic element common to all employee stock ownership plans is that they are qualified stock bonus plans designed to invest primarily in qualifying securities of the employer whose employees are covered by the plan. In addition it is understood that a qualified money purchase pension plan designed to invest primarily in such securities of the employer may be coupled with such a qualified stock bonus plan (and that a profit-sharing plan sometimes may be used). Furthermore, it is understood that a frequent characteristic of some employee stock ownership plans is that they leverage their purchase of qualifying employer securities as a way to achieve transfers in the ownership of corporate stock and other capital requirements of a corporation and that such a plan is designed to build equity ownership of shares of the employer corporation for its employees in a nondiscriminatory manner.

The conferees intend that the exemption from the prohibited transaction rules with respect to loans to employee stock ownership plans is to apply only in the case of loans (and guarantees) used to leverage the purchase of qualifying employer securities (and related business interests).

Exemption for bank deposits.—In certain cases the prohibited transaction rules of the substitute do not prevent a bank or similar institution (e.g., a savings and loan association or credit union) which is a plan fiduciary from investing all or part of the plan's assets in deposits with the bank, etc., if the deposits bear a reasonable interest rate. This exemption is allowed if the plan covers only employees of the bank, etc., or employees of its affiliates. In this case, it would be contrary to normal business practice for a bank to invest its plan assets in another bank.

A deposit with a bank, etc., fiduciary also is not prohibited if it is expressly authorized by the plan or is specifically authorized by a fiduciary (other than the bank or an affiliate of the bank) who is expressly empowered by the plan to direct that this investment be made. In this case, there is no conflict of interest involving the bank fiduciary upon a deposit with the bank, etc.

This exception, as all other exceptions to the prohibited transaction rules, is not to affect the applicability of the prudent man, diversi-

fication, etc., rules. However, it is expected that generally these rules will not be violated if all plan assets in an individual account plan are invested in a federally-insured account, so long as the investments are fully insured. (If an individual's account balance is greater than the amount covered by Federal insurance, this will not violate the prudence and diversification requirements if the individual participant or beneficiary has control over his account and determines, for himself, that the assets should be so invested.)

Exemptions for purchase of insurance.—The substitute does not prohibit a plan from purchasing life insurance, health insurance, or annuities from the employer that maintains the plan if the employer is an insurer qualified to do business in a State (or the District of Columbia). In this case, it would be contrary to normal business practice to require the plan of an insurance company to purchase its insurance from another insurance company. This exemption is available only if no more than adequate consideration is paid for the insurance by the plan.

This exemption also applies to the purchase of life insurance, health insurance, and annuities from an insurer that is wholly-owned, directly or indirectly, by the employer establishing the plan (or is wholly owned by a party-in-interest with respect to the employer establishing a plan). This rule applies if the total premiums and annuity considerations written by all such wholly-owned insurers for life insurance, health insurance, and annuity premiums purchased by all employers which are parties-in-interest and their plans are not more than 5 percent of the total premiums and annuity considerations written for all lines of insurance by these insurers. (In computing this 5 percent figure, all premiums and annuity considerations written by an insurance company for a plan which it maintains are to be excluded from both the numerator and the denominator of the fraction.) This exception also is allowed only if no more than adequate consideration is paid for the insurance.

The conferees understand that for some purposes, certain insurance contracts may be considered as securities. However, the substitute provides that insurance contracts are not to be considered as "employer securities" to the extent that the exception described above from the prohibited transaction requirements would apply to the purchase of insurance contracts by a plan. (Otherwise, the rules with respect to employer securities might, as a practical matter, prevent this exemption from operating as it is intended.)

Exemption for ancillary bank services.—Unless otherwise specifically allowed by statutory or administrative exemption, generally a fiduciary is not to be able to provide "multiple services" to a plan. (However, the prohibition against providing multiple services is not to apply to parties-in-interest, who are not fiduciaries.) This rule was adopted because of the potential problems inherent in situations where persons who can act on behalf of a plan also are in a position to personally benefit at the expense of the plan in exercising that authority. However, as indicated above, it is expected that administrative exemptions will be established for sound commercial and financial practices where there are adequate safeguards. Also, the substitute provides some limited statutory exemptions from the general rule.

Under the substitute, a bank or similar financial institution (such as a savings and loan association or credit union) which is supervised by Federal or State authorities, is not prohibited from providing multiple ancillary services in certain limited circumstances. First, no more than reasonable compensation can be charged by the bank, etc., for these services. Also the bank, etc., must have established adequate internal safeguards to assure that its provision of ancillary services is in accord with sound banking and financial practice, as determined by Federal and State banking authorities. In addition, the bank's action must be in accordance with binding specific guidelines issued by the bank that will prevent the bank from providing ancillary services in an unreasonable or excessive manner or in a manner that would be inconsistent with the best interests of the plan's participants and beneficiaries. Such guidelines are to be subject to, and not inconsistent with, coordinated regulations of the Secretaries of Labor and Treasury, which are to be issued after consultation with State and Federal banking authorities. The bank's guidelines must be reported to the Department of Labor and Internal Revenue Service, and must be reported to each plan to which multiple services are provided. Of course, if the bank does not follow the guidelines, the exemption will not be available.

Placing plan funds in noninterest bearing checking accounts is an example of the type of an ancillary service that might be provided by a bank that is a plan fiduciary. However, a number of short-term investment vehicles have been developed recently so that such cash balances should be kept to the very minimum necessary for the current operations of the plan. Therefore, it is expected that adequate guidelines and procedures to prevent unreasonable cash balances will require the bank to invest plan funds in such vehicles to the maximum extent feasible. Also, in determining whether a plan pays more than reasonable compensation for its checking account services, the interest available on an alternate use of the funds is to be considered. It is also expected that proper procedures and guidelines will keep to a minimum the amount of discretion on the part of the bank, etc., in determining the amount of cash balances. The conferees intend that such limitation of discretion is to be included in guidelines that govern other ancillary services that may be provided by banks, etc.

Exemption for conversion of securities.—Under the substitute a plan may hold or acquire certain employer securities. Since some of these securities may be convertible (*e.g.*, from bonds to stock) the substitute would not prohibit such a conversion to the extent provided in regulations if the plan receives at least fair market value under the conversion. It is expected that a conversion will be permitted if all the securities of the class held by the plan are subject to the same terms and such terms were determined in an arm's-length transaction, so that conversions cannot be tailored to apply only to a particular plan. Similarly, it is intended that a conversion generally will not be permitted if all but an insignificant percentage of unrelated holders of such securities do not exercise such conversion privileges. Also, it is intended that any acquisition of employer securities pursuant to a conversion privilege must be within the limits established by the general rules governing the acquisition and holding of employer securities, discussed below.

Exemption for certain pooled investment funds.—The conferees understand that it is common practice for banks, trust companies and insurance companies to maintain pooled investment funds for plans. If the bank, etc., is the plan trustee and invests the plan assets in its pooled fund (rather than managing the assets individually) this would be considered a purchase of investment units in the fund and would be prohibited under the general rules. However, since generally the net effect of pooling plan assets is to achieve more efficient investment management, in certain circumstances the substitute allows the purchase and sale of interests in a pooled fund maintained by a bank, etc., which is a plan fiduciary.

To be allowed, no more than reasonable compensation may be paid by the plan in the purchase (or sale) and no more than reasonable compensation may be paid by the plan for investment management by the pooled fund. In addition, it generally is inappropriate for the bank, etc., to make the decisions with respect to investment in a pooled fund because of a potential conflict of interest. Therefore, this exception is allowed only if the transaction is specifically permitted by the plan or if a plan fiduciary (other than the bank, etc., or its affiliates) who has authority to manage and control the plan assets specifically permits such investment.

Banks, etc., that operate such pooled investment funds are, of course, plan fiduciaries. As fiduciaries they must act, *e.g.*, for the exclusive benefit of participants and beneficiaries. Therefore, a bank, etc., cannot use pooled funds as a place to dump unwanted investments which were initially made on its own (or another's) behalf.

Exemptions for owner-employees, etc.—The substitute retains the prohibited transaction rules (but not the disqualification sanction) of present law (sec. 503(g) of the Internal Revenue Code) with respect to owner-employees. Consequently, under the substitute the exceptions from the prohibited transaction rules described above generally will not apply with respect to sales, loans, payments for services, etc., between a plan and an owner-employee with regard to that plan. Also, since shareholder employees of subchapter S corporations are generally treated as owner-employees, the same limitations apply with respect to shareholder-employees. Additionally, these limitations apply to participants and beneficiaries of (and employers who establish and maintain) individual retirement accounts, individual retirement annuities, and individual retirement bonds, since these persons generally have the same type of control with respect to a plan as do owner-employees.

Exemptions for distribution of plan assets.—It is not a prohibited transaction for a plan to distribute its assets in accordance with the provisions of the plan and in the case of a pension plan if the distribution is in accord with the allocation of assets rules under the termination insurance provisions of the substitute.

Also, a distribution of assets from a welfare (or pension) plan, as described above in "Basic fiduciary rules", is exempt from the labor provisions as to prohibited transactions.

Employer securities and employer real property

Eligible individual account plans.—The labor provisions of the substitute generally limit the acquisition and holding by a plan of

employer securities and of employer real property (combined) to 10 percent of plan assets. (Employer securities are securities issued by an employer with employees covered by the plan or its affiliates. Employer real property is real property which is leased by a plan to an employer (or its affiliates) with employees covered by the plan.)

However, a special rule is provided for individual account plans which are profit-sharing plans, stock bonus plans, employee stock ownership plans, or thrift or savings plans, since these plans commonly provide for substantial investments in employer securities or real property. Also, money purchase plans which were in existence on the date of enactment, and which invested primarily in employer securities on that date are to be treated the same way as profit-sharing, etc., plans. (However, employer-established individual retirement accounts are not to be eligible individual account plans.)

In recognition of the special purpose of these individual account plans, the 10 percent limitation with respect to the acquisition or holding of employer securities or employer real property does not apply to such plans if they explicitly provide for greater investment in these assets. In addition, the diversification requirements of the substitute and any diversification principle that may develop in the application of the prudent man rule is not to restrict investments by eligible individual account plans in qualifying employer securities or qualifying employer real property.

These exceptions apply only if the plan explicitly provides for the relevant amount of acquisition or holding of qualifying employer securities or qualifying real property. For example, if a profit-sharing plan is to be able to invest half of its assets in qualifying employer securities, the plan must specifically provide that up to 50 percent of plan assets may be so invested. In this way, the persons responsible for asset management, as well as participants and beneficiaries, will clearly know the exten to which the plan can acquire and hold these assets. Plans in existence on the date of enactment will have one year from January 1, 1975, to be amended to comply with this requirement. If the plan does not comply within one year (but, *e.g.*, complies 2 years after January 1, 1975), then during the interim period, the plan will be subject to the 10 percent rule as well as the diversification requirement. This means, generally, that the plan will not be able to acquire any additional employer securities or employer real property during this period (and preparation should be made for divestiture of half of the excess of employer securities and real property by January 1, 1980.)

Under the substitute, only "qualifying" employer securities may be acquired and held by individual account plans under the rules described above. Stock of the employer will constitute qualifying securities. Also, certain debt will be qualifying employer securities if it is traded on a national securities exchange or has a price otherwise established by independent persons, and if the plan holds no more than a quarter of the issue and independent persons hold at least one-half of the issue. (Qualifying employer debt securities essentially are debt securities that meet the present rules of section 503(e) of the Internal Revenue Code.)

Also, under the substitute only "qualifying" employer real property may be acquired and held by eligible individual account plans under

the rules described above. Real property which is leased to an employer is qualifying employer real property if a substantial number of the parcels are distributed geographically and if each parcel of real property and the improvements on it are suitable (or adaptable without excessive cost) for more than one use.[4] For example, the plan might acquire and lease to the employer multipurpose buildings which are located in different geographical areas. It is intended that the geographic dispersion be sufficient so that adverse economic conditions peculiar to one area would not significantly affect the economic status of the plan as a whole. All of the qualifying real property may be leased to one lessee, which may be the employer or an affiliate of the employer.

To the extent that an eligible individual account plan can acquire qualifying employer securities, it may acquire these securities from parties-in-interest if the acquisition is for adequate consideration and no commission is charged in the transaction. (The conferees intend that if a purchase is made from an underwriter who assumes the risks of market fluctuations after the award date, the underwriter's margin is not to be regarded as a "commission.") A similar exception from the prohibited transaction rules (in both the labor and tax provisions) is available for the acquisition from an employer of qualifying employer real property, the leasing of such property to the employer (or its affiliate) and the sale of such real property back to the employer on termination of the lease for adequate consideration. However, real property is not qualifying employer real property unless it is leased to the employer. Therefore, except for qualifying leasebacks, a plan generally is prohibited from acquiring real property from the employer.

Other plans.—Under the substitute, a plan other than an eligible individual account plan cannot acquire any employer securities or real property if immediately after doing so the plan would hold more than 10 percent of the fair market value of its assets in employer securities or real property. The acquisition rules apply not only to the purchase of employer securities, etc., but also to acquisition in other ways such as by exercise of warrants or by acquisition on default of a loan where the stock was made security for the loan. Also, these plans (as eligible individual account plans) are not to acquire any employer securities or employer real property other than qualifying employer securities or qualifying employer real property.

In addition, if a plan holds more than 10 percent of the fair market value of its assets in employer securities and real property on January 1, 1975, it is to dispose of enough of these assets to bring its holdings of employer securities, etc. to no more than 10 percent of plan assets on or before December 31, 1984.

In general, the 10 percent holding rule will be met on the first date after January 1, 1975 (and on or before December 31, 1984) that a plan holds no more than 10 percent of the fair market value of its assets in employer securities or employer real property. Thus, if a plan on January 1, 1975, holds qualifying employer securities and qualifying em-

[4] Qualifying employer real property includes the real property and related personal property.

ployer real property worth $200,000 and has total assets worth $1,000,000, the plan must bring its employer securities, etc., down to 10 percent of plan assets. If, *e.g.*, there is a substantial market rise in the value of the plan's other assets in the year 1976, so all plan assets are now worth $2,000,000, but employer securities are still worth $200,000, then the holding requirement has been met and from that time on, only the acquisition rule will affect the plan. (Under the acquisition rule, the plan could not acquire any more qualifying employer securities in 1976, since immediately after the acquisition more than 10 percent of plan assets would be invested in employer securities.) Also, if the fair market value of other plan assets decrease to $1,500,000 in 1977, so the plan has $200,000 of employer securities and $1,500,000 total assets, the plan will not violate the holding (or acquisition) rules, since it met the holding rules in 1976.

Under the substitute, a plan is not required to dispose of more qualifying employer securities than would bring its holdings down to 10 percent of the fair market value of assets on the date of enactment. Thus, if a plan had $200,000 of employer securities and $1,000,000 total assets on date of enactment, it would satisfy the 10 percent holding rule when it had employer securities of $100,000, even if its total assets had dropped to $900,000.

The substitute allows a special election for calculating the 10 percent holding rule (but not the 10 percent acquisition rule). Under this election, the 10 percent holding rule is met if on or before December 31, 1984, the value of employer securities which are held on January 1, 1975, is no greater than 10 percent of the fair market value of plan assets on January 1, 1975, plus employer contributions to the plan made after December 31, 1974, and prior to January 1, 1985. For this purpose, employer contributions are to be included only to the extent of the growth in the value of plan assets (other than employer securities) from January 1, 1975, through December 31, 1984. Election to make this provision applicable must be made prior to January 1, 1976, and the election is irrevocable once it is made. For purposes of this rule, employer securities held on January 1, 1975, are to include employer securities the ownership of which is derived solely from the employer securities held on January 1, 1975, or from the exercise of rights derived from such ownership under regulations to be prescribed by the Secretary of Labor. This election is to be available only for a plan which holds no employer real property, and does not acquire employer real property until after December 31, 1984.

A plan must be half-way toward meeting the 10-percent rule by December 31, 1979. The maximum percentage of assets that a plan may have in employer securities and employer real property on that date is to be established by regulations (which are to be issued by December 31, 1976). Generally, it is expected that the regulations will provide that the maximum percentage of assets that a plan may have in employer securities and real property on (or before) December 31, 1979, is to be determined by adding 10 percent to half of the percentage of employer securities, etc., held by the plan on January 1, 1975 in excess of 10 percent. For example, if 15 percent of the plan's assets are in employer securities on January 1, 1975, generally it is expected that the plan

must have reduced its percentage of employer securities to 12½ per-percent on or before December 31, 1979. (That is, $10 + \frac{(15-10)}{2} = 12\frac{1}{2}$.)

If securities are qualifying employer securities they generally can be acquired or held notwithstanding the prohibited transaction rules, if acquisition is for adequate consideration and no commission is charged and if acquisition is allowed by the employer securities rules. However (except as noted above for eligible individual account plans), acquisition and holding of these assets must also meet the rules of prudence, diversification, etc. Therefore, if the diversification and prudence rules require that less than 10 percent of plan assets are to be held in employer securities and employer real property, the lower limit is to govern. Furthermore, the exclusive benefit rule also may apply. Thus, while a plan may be able to acquire employer securities or real property under the employer securities rules, the acquisition must be for the exclusive benefit of participants and beneficiaries. Consequently, if the real property is acquired primarily to finance the employer, this would not meet the exclusive benefit requirements.

Generally these rules apply only to the holding (or acquiring) of qualified employer securities or qualified employer real property. Under the general prohibited transaction rules, a plan is not to hold (or acquire) any other employer securities or employer real property (since this would be a prohibited loan or lease, respectively). Of course, the general transition rules discussed below will apply to employer securities or real property held on July 1, 1974.

Civil liability

Fiduciaries.—Under the labor provisions (but not the tax provisions) of the substitute, a fiduciary who breaches the fiduciary requirements of the bill is to be personally liable for any losses to the plan resulting from this breach. Such a fiduciary is also to be liable for restoring to the plan any profits which he has made through the use of any plan asset. In addition, such a fiduciary is to be subject to other appropriate relief (including removal) as ordered by a court. The place and manner of bringing civil actions against a fiduciary is described below.

Generally, a plan fiduciary is not to be liable for any breach of fiduciary duty if it occurred before he became a fiduciary or after he was no longer a fiduciary.

Party-in-interest.—A party-in-interest who engages in a prohibited transaction with respect to a plan that is not qualified (at the time of the transaction) under the Internal Revenue Code may be subject to a civil penalty of up to 5 percent of the amount involved in the transaction. If the transaction is not corrected after notice from the Secretary of Labor, the penalty may be up to 100 percent of the transaction.

Exculpatory provisions and liability insurance.—Under the substitute, exculpatory provisions which relieve a fiduciary from liability for breach of the fiduciary responsibility rules are to be void and of no effect. (However, this is not to affect the fiduciary's ability to allocate or delegate his responsibilities, as described above.)

The substitute also provides, however, that a plan may purchase insurance for itself and for its fiduciaries to cover liability or loss re-

sulting from their acts or omissions if the insurance permits recourse by the insurer against the fiduciaries in case of a breach of fiduciary responsibility. Also, under the substitute, a fiduciary may purchase insurance to cover his own liability, and an employer or union may purchase liability insurance for plan fiduciaries (and these policies need not provide for recourse).

Excise tax on prohibited transactions

In general.—As indicated above, the substitute establishes an excise tax on disqualified persons who participate in specific prohibited transactions respecting a pension plan. The tax applies with respect to a plan which has qualified after the effective date of the prohibited transaction provisions (or has been determined to qualify by the Secretary of the Treasury under section 401, 403(a), or 405(a) of the Code) and with respect to a qualified individual retirement account, bond or annuity (under sections 408 or 409). The prohibited transaction rules and excise tax sanctions are to continue to apply even if the plan, etc., should later lose its tax qualification.

This excise tax generally follows the same procedures as the tax on self-dealing enacted in 1969 Tax Reform Act with respect to private foundations. The tax is at two levels: initially, disqualified persons who participate in a prohibited transaction are to be subject to a tax of 5 percent of the amount involved in the transaction per year. A second tax of 100 percent is imposed if the transaction is not corrected after notice from the Internal Revenue Service that the 5-percent tax is due.

Following present law with respect to private foundations, under the substitute where a fiduciary participates in a prohibited transaction in a capacity other than that, or in addition to that, of a fiduciary, he is to be treated as other disqualified persons and subject to tax. Otherwise, a fiduciary is not to be subject to the excise tax.

The first-level tax is owed for each taxable year (or part of a year) in the period that begins with the date when the prohibited transaction occurs and ends on the earlier of the date of collection or the date of mailing of a deficiency notice for the first-level tax (under section 6212 of the Internal Revenue Code). The first-level tax is imposed automatically without regard to whether the violation was inadvertent.

If more than one person is liable for the excise tax as a result of a particular prohibited transaction, they all are to be jointly and severally liable. For example, if the prohibited transaction involves $100,000, all disqualified persons who participated in the transaction will be jointly and severally liable for the first-level tax of $5,000 (per year in the taxable period) and also jointly and severally liable for the second-level tax of $100,000.

The excise tax on a prohibited transaction is dependent upon the amount involved in the transaction. The substitute provides that the amount involved is the greater of the fair market value of the property (including money) given or received in a transaction. However, with regard to services which are necessary to the operation of the plan and which generally may be paid for if the compensation is not excessive, the amount involved generally is the excess compensation. For the first-level tax, the amount involved in a prohibited transaction is valued as of the date of the transaction. However, for the second-level tax,

the amount involved is valued at the highest fair market value during the correction period. The higher valuation is used for the second-level tax so the person subject to tax will not delay returning the amount involved to the trust in order to earn income with this amount.

A prohibited transaction may be corrected to avoid a second-level tax at any time before the 90th day after the Internal Revenue Service mails a notice of deficiency with respect to the second-level tax. However, the 90-day period may be extended by any period within which a deficiency cannot be assessed (because of petitions to the Tax Court), and may also be extended for a period which the Internal Revenue Service determines is both reasonable and necessary to correct the prohibited transaction.

To correct a prohibited transaction, the transaction must be undone to the extent possible, but in any case the final position of the plan must be no worse than it would have been if the disqualified person were acting under the highest fiduciary standards. The higher valuation to be used in computing any second-level tax that might be applicable is also the valuation to be used in correcting the transaction. In other words, correction requires that the plan receive the benefit of whatever bargain turns out to have been involved in the transaction.

Before sending a notice of deficiency with respect to the first level and second level taxes, the Internal Revenue Service is to notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of these taxes. However, the Service will be able to waive (or abate) only the second level tax (and not the first level tax) upon a correction that is obtained by the Secretary of Labor.

Voluntary retroactive application.—Under present law; if a prohibited transaction occurs, a plan (and trust) loses its exemption from taxation. If a trust is disqualified because of an act of the trustee and the employer, then the income tax imposed on the trust may be paid out of funds otherwise available to provide employees' retirement benefits and the sanction may then fall on innocent employees. To correct this problem in the future, the substitute eliminates disqualification and instead would impose an excise tax sanction for a violation of the prohibited transactions provisions.

The substitute also makes the excise tax sanction available—on a wholly voluntary basis—instead of the disqualification sanction in the case of plans which have engaged in prohibited transactions in (open) years before the effective date of the new prohibited transactions. Therefore, if a disqualified person with respect to a plan elects to be subject to and pays the excise tax, the plan and trust are not to be disqualified. For purposes of this application of the excise tax, the prohibited transactions are to be defined by present section 503 (b) or (g) of the Code and the amount involved is to be the amount that would be determined under new section 4975 of the Code. Since the tax is to be wholly voluntary, the joint and several liability provisions of new section 4975 are not to apply (unless there is an election by several disqualified persons to this effect). Also, the first-level tax that is to be paid under this provision will be owed for taxable periods calculated under new section 4975. Thus, if the prohibited transaction (under present section 503) occurred in 1972 and is corrected in 1974,

the first-level tax will be owed for 1972, 1973, and 1974. As under new section 4975, the second-level tax will be owed only if the transaction is not corrected within the time allowed by that section.

Since this is to be a relief provision, no liability is to be imposed under the labor provisions of the substitute on a person who may be a plan fiduciary after January 1, 1975, if he fails to pay the tax and the plan is disqualified. Consequently, any decision to pay or not to pay this optional tax is to be deemed to have been made before January 1, 1975, and, therefore, to be made before the substitute would establish any duties on plan fiduciaries.

Definitions

The substitute defines "fiduciary" as any person who exercises any discretionary authority or control respecting management of a plan, exercises any authority or control respecting the management or disposition of its assets or has any discretionary authority or responsibility in the administration of the plan. Under this definition, fiduciaries include officers and directors of a plan, members of a plan's investment committee and persons who select these individuals. Consequently, the definition includes persons who have authority and responsibility with respect to the matter in question, regardless of their formal title. The term "fiduciary" also includes any person who renders investment advice for a fee and includes persons to whom "discretionary" duties have been delegated by named fiduciaries.

While the ordinary functions of consultants and advisers to employee benefit plans (other than investment advisers) may not be considered as fiduciary functions, it must be recognized that there will be situations where such consultants and advisers may because of their special expertise, in effect, be exercising discretionary authority or control with respect to the management or administration of such plan or some authority or control regarding its assets. In such cases, they are to be regarded as having assumed fiduciary obligations within the meaning of the applicable definition.

The labor definition of a "party-in-interest" includes the following general categories. (1) Plan administrators, officers, fiduciaries, trustees, custodians, counsel and employees. (2) Persons providing services to a plan. (3) The employer, its employees, officers, directors, or 10-percent shareholders. (4) Controlling or controlled parties or parties under common control (and their employees, officers, directors, or 10-percent shareholders). (Under the substitute, "control" is generally defined at 50-percent ownership. However, the Secretary of Labor and Secretary of Treasury may, by regulation, reduce this percentage.) (5) Employee organizations with members covered by the plan, its employees, its officers and directors and its affiliates (6) Certain relatives and partners of parties-in-interest are also treated as parties-in-interest.

Under the tax provisions, the same general categories of persons are disqualified persons, with some differences. Although fiduciaries are disqualified persons under the tax provisions, they are to be subject to the excise tax only if they act in a prohibited transaction in a capacity other than that of a fiduciary. Also, only highly-compensated employees are to be treated as disqualified persons, not all employees of an employer, etc.

Prohibition against certain persons holding office

The labor provisions of the substitute prohibit a person who is convicted of certain specified crimes from serving as a plan administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee or consultant of a plan for five years after conviction or five years after the end of imprisonment, whichever is later. However, such a person may serve as an administrator, etc., of a plan if his citizenship rights have been fully restored or if the United States Board of Parole determines that his service would not be contrary to the purposes of the labor provisions of the substitute.

Corporations and partnerships are not to be barred from acting as plan administrators, etc., without a determination from the Board of Parole that such service would be inconsistent with the labor provisions of the substitute.

No one is to knowingly permit another to serve as a plan administrator, etc., in violation of this provision. Those who violate this provision may be fined up to $10,000 and also may be imprisoned for up to one year. This provision is to apply to crimes committed before the date of enactment.

Bonding

The labor provisions of the substitute generally require every fiduciary of an employee benefit plan (and every person who handles funds or other property of a plan) to be bonded. This provision generally is identical to present section 13 of the Welfare and Pension Plans Disclosure Act and it is intended that the construction given to the bonding requirements before enactment of the substitute would continue. Generally, the amount of the bond is to be not less than 10 percent of the funds handled and not less than $1,000 (nor more than $500,000, except as otherwise required by the 10 percent rule or as prescribed by the Secretary of Labor). The substitute would not require a bond if plan benefits are paid only from the general assets of a union or employer. A bond also is not to be required for a domestic trust or insurance corporation subject to State or Federal supervision or examination if it has capital and surplus combined in excess of $1 million (or such other higher amount determined by the Secretary of Labor). However, a special rule is provided for banks or other financial institutions exercising trust powers if their deposits are not insured by the Federal Deposit Insurance Corporation. In this case a bond will not be required if the corporation meets bonding (or similar requirements) of State law which the Secretary of Labor determines are at least equivalent to bonding requirements imposed on banks under Federal law.

It is expected that regulations to be prescribed by the Secretary of Labor under this provision would include procedures for exempting plans where other bonding arrangements of the employer, employee organization, investment manager or other fiduciaries or the overall financial condition of the plan or the fiduciaries meet specified standards deemed adequate to protect the interests of the beneficiaries and participants, including bonds subject to a reasonable maximum for professional investment managers supervising large aggregations of clients' funds.

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Effective date and transition rules

Generally, the new fiduciary responsibility rules are to take effect on January 1, 1975. However, with respect to any plan which is covered by plan termination insurance and which terminates before January 1, 1975, the fiduciary rules are to take effect on the date of enactment of the bill.

Under the labor provisions, the Secretary of Labor may postpone until January 1, 1976, the effective date with respect to the requirements for establishing a plan and establishing a trust, the rules regarding liability for breach by a co-fiduciary (other than the rules allowing delegation of asset management functions to an investment manager) and the rules prohibiting exculpatory clauses. The Secretary of Labor may allow such a delay only for plans in existence on the date of enactment and only if he determines (on application of the plan) that the delay is (1) necessary to amend the plan instrument, and (2) not adverse to the plan participants and beneficiaries.

To prevent undue hardship, the substitute also provides transition rules for situations where employee benefit plans are now engaging in activities which do not violate current law, but would be prohibited transactions under the substitute.

One of the transition rules permits the leasing or joint use of property involving a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of the contract), to continue for 10 years beyond that date until June 30, 1984. For this transition rule to apply, the lease or joint use must remain at least as favorable to the plan as an arm's-length transaction with an unrelated party and must not otherwise be a prohibited transaction under present law. A similar 10-year transition rule applies to loans or other extensions of credit under a binding contract in effect on July 1, 1974 (and renewals thereof), where the loan remains as favorable as an arm's-length transaction with an unrelated party and is not prohibited under present law.

The substitute allows a plan to sell property, at arm's-length terms, to a party in interest where the property is now under a lease or joint use which qualifies for the 10-year transition rule described above. Sales of this type must occur before July 1, 1984. This transition rule is provided because it appears that such leases are not uncommon and in such cases often a party in interest is the best available buyer.

The substitute allows a fiduciary to provide multiple services to a plan until June 30, 1977, if he ordinarily and customarily furnishes services on June 30, 1974. Under this provision, such a fiduciary would not be limited to providing these services to plans which he served on that date, but he could take on new customers after that date. Under the substitute, multiple services also can be provided until June 30, 1977, if they were being provided under a binding contract in effect on July 1, 1974 (or under renewals of such a contract). It is intended that under this provision fiduciaries can continue to provide such services for the next three years in order that they might continue their business during the pendency of and application for a variance from the prohibited transaction rules. However, these services can only be provided under the transition rules if the price is at least an arm's-length price during the whole transition period and if

they would not constitute a prohibited transaction under current section 503 of the Internal Revenue Code.

The substitute permits a plan to dispose of excess employer securities or employer real property owned by the plan on June 30, 1974, and at all times thereafter to a party-in-interest if the holding of such property would violate the rules governing holding of employer securities and real property, and if the sale, etc., is at fair market value.

VI. Labor and Tax Administration and Enforcement (Secs. 501–516 and 1041–1052 of the Bill and Secs. 7476 and 7802 of the Internal Revenue Code.)

Labor Department

Criminal penalty.—Under the bill as passed by the House, any person who willfully violates any of the provisions in title I of the Act, makes any statement in any report required to be filed or to be kept under that title knowing that it is false or misleading in any material fact, or forges or counterfeits or passes as true any document knowing it was forged or counterfeit for the purpose of influencing the acts of the Secretary of Labor is guilty of a crime which is punishable by a fine of up to $10,000 and 5 years of imprisonment, or both. If the act is committed by someone other than an individual the fine may be up to $200,000.

The bill as passed by the Senate did not contain comparable provisions but did provide for a fine of up to $1,000 and 6 months imprisonment, or both, for willful violation of the disclosure provisions.

Under the conference agreement, any person who willfully violates any provisions in title I of the bill relating to reporting and disclosure may be fined not more than $5,000 or imprisoned for more than 1 year, or both, except that in the case of a violation by a person other than an individual the fine may not exceed $100,000. The conference agreement retains present criminal provisions of Title 18, U.S.C. relating to false statements, bribery, kickbacks, embezzlement, etc., in connection with employee benefit plans.

Civil penalty for failure to disclose.—Under the bill as passed by the House, if a plan administrator fails or refuses to furnish a participant or a beneficiary with a copy of the latest annual report (or such other information that is required to be furnished under the Act) within 30 days after a request for it, the administrator may be personally liable to the participant or beneficiary for up to $50 a day from the date of the failure and a court, in its discretion, may grant such other relief as it deems proper. The bill as passed by the Senate contains no comparable provision but relies upon the existing provisions of law to impose liability on the plan administrator. Under the conference agreement the administrator may be personally liable to the participant or beneficiary for up to $100 per day from the date of the failure and the court may in its discretion order such other relief as it deems proper.

Civil actions by participants and beneficiaries.—In addition, under the bill as passed by both the House and Senate, civil action may be brought by a participant or beneficiary to recover benefits due under the plan, to clarify rights to receive future benefits under the plan, and for relief from breach of fiduciary responsibility.

Under the conference agreement, civil actions may be brought by a participant or beneficiary to recover benefits due under the plan, to clarify rights to receive future benefits under the plan, and for relief from breach of fiduciary responsibility. The U.S. district courts are to have exclusive jurisdiction with respect to actions involving breach of fiduciary responsibility as well as exclusive jurisdiction over other actions to enforce or clarify benefit rights provided under title I. However, with respect to suits to enforce benefit rights under the plan or to recover benefits under the plan which do not involve application of the title I provisions, they may be brought not only in U.S. district courts but also in State courts of competent jurisdiction. All such actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947. The U.S. district courts are to have jurisdiction of these actions without regard to the amount in controversy and without regard to the citizenship of the parties. In any action brought by a participant or beneficiary, the court may allow reasonable attorney's fees or costs to either party. An action in the U.S. district court may be brought in the district where the plan is administered or where the breach of fiduciary duty took place, or where a defendant resides or may be found. Process may be served in any other district where a defendant resides or may be found. If a participant or beneficiary brings an action in Federal court to enforce rights under title I, he is to provide a copy of the complaint to the Secretary of Labor and the Secretary of Treasury by certified mail. A copy is not required to be provided in any action which is solely for the purpose of recovering benefits under the plan. The Secretary of Labor or the Secretary of Treasury, or both, are to have the right to intervene in any action at their discretion.

Civil actions by the Secretary of Labor.—Under the bill as passed by the House, the Secretary of Labor may bring suit for breach of fiduciary responsibility and to enjoin any act or practice which violates the provisions of title I of the Act. The Secretary of Labor may also intervene in actions brought under the Act by participants and beneficiaries.

Under the bill as passed by the Senate, the Secretary of Labor may petition the court for an order requiring the return of assets transferred from a retirement fund, requiring the payment of benefits to a participant or beneficiaries, restraining conduct violating the fiduciary rules, and granting such other appropriate relief including the removal of a fiduciary. The Secretary is also authorized to bring suit when he believes that an employee benefit fund is being or has been administered in violation of the Act or the governing documents of the retirement fund. In addition, the bill as passed by the Senate authorizes the Secretary of Labor to intervene at his discretion in actions brought under the Act by participants or beneficiaries.

The conference agreement generally conforms to the provisions as passed by the House. The Secretary of Labor may bring an action for breach of a fiduciary duty or to enjoin any act or practice which violates the provision of title I of the Act or to obtain any other appropriate relief to enforce any provision of that title. In the case of a transaction by a party in interest with respect to a plan which is

not qualified under the Internal Revenue Code, the Secretary of Labor may assess a civil penalty not to exceed 5 percent of the amount of the transaction. If not corrected, an additional penalty of not more than 100 percent of the transaction may be imposed.

In the case of any plan which has been found by the Internal Revenue Service to be a qualified employee benefit plan under the Internal Revenue Code (or with respect to any plan which has a pending application for a determination to be so qualified), the Secretary of Labor is not to bring an action for equitable relief with respect to a violation of the participation, vesting and funding standards of title I unless he is requested to do so either by the Secretary of the Treasury or by one or more participants, beneficiaries, or fiduciaries of the plan.

Benefit claim procedure.—The bill as passed by the House contains no provisions providing for procedures for resolving disputes between the plan administrator and participants or beneficiaries. Under the bill as passed by the Senate each pension plan is required to establish a procedure for a review of disputes between the plan administrator and participants or beneficiaries and afford an opportunity for arbitration of any dispute. Under the conference agreement every employee benefit plan is required to provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for denial written in a manner calculated to be understood by the participant. In addition, the plan administrator is required to afford a reasonable opportunity to any participant or beneficiary whose claim for benefits has been denied for a full and fair review of this decision by the plan administrator.

Investigatory authority.—Under the bill as passed by the House, the Secretary of Labor, where he has reasonable cause to believe that violations of the provisions of this bill have been committed, may enter places, inspect accounts and question persons to the extent he deems necessary in order to determine whether any provision of title I has been or is about to be violated. The Secretary is authorized to request the filing of supporting schedules of information and to publish and report on any investigation to interested persons or government officials.

Under the bill as passed by the Senate, the Secretary may enter premises and inspect records and accounts but he may make no more than one examination of books and records per year unless he has reasonable cause to believe that there was a violation of title I. The bill as passed by the Senate also authorizes the Secretary to require the filing of supporting schedules of information. The Secretary of Labor is further authorized to make arrangements with the Secretary of Treasury to prevent duplication of effort regarding investigation of violations relating to fiduciaries.

Under the conference agreement, the Secretary of Labor is to have the power in order to determine whether there have been violations or there are about to be violations of any provision of title I to make an investigation. In connection with the investigation, he may require the submission of reports, books and records, and the filing of supporting data, but no plan may be required to submit such books, records or supporting data more than once annually unless the Secretary has reasonable cause to believe there may exist a violation under title I.

The Secretary also may enter places and inspect records and accounts and question those persons he deems necessary to enable him to determine the facts relative to the investigation if he has reasonable cause to believe there may exist a violation under title I. The Secretary is authorized to make available to persons covered by the plan and to any department or agency of the United States information concerning any matter which has been the subject of the investigation.

Subpoena power.—Under the bill as passed by the House, the Secretary of Labor is given the same powers of subpoena as are given to the Federal Trade Commission. The bill as passed by the Senate contains the same provisions as that passed by the House and in addition provides that the Secretary of Labor may delegate his auditing and investigation functions with respect to insured banks acting as fiduciaries to appropriate Federal banking agencies. The conference agreement adopts the provisions of the bill as passed by the Senate.

Appropriations authorized, etc.—Under the bill as passed by the House and the Senate, there is authorized appropriations of such sums as may be necessary to enable the Secretary of Labor to carry out his functions and duties under the bill. In addition, under the bill as passed by the Senate, the Secretary of Labor is authorized to increase the number of supergrade positions in the Department of Labor. Under the conference agreement the Secretary of Labor is authorized to add one additional position in the GS–18 level in the Department of Labor and to place 20 additional positions in the GS–16 and 17 level in the Department of Labor.

Service of process.—Under the bill as passed by the House, subpoena or other legal process of a court upon a trustee or plan administrator constitutes service on the plan. In addition, a plan may sue or be sued as an entity. The bill as passed by the Senate does not contain comparable provisions. The conference agreement basically adopts the provisions as passed by the House but provides that where a plan does not designate in its plan description an individual as agent for service of legal process, service upon the Secretary of Labor is to constitute adequate service. In that case the Secretary upon receipt of service of process is to notify the administrator or any trustee of the pending action within 15 days after he is served.

Enforcement of judgment.—The bill as passed by the House provides that a money judgment under title I of the Act against the plan is to be enforceable only against the plan as an entity and not against any other person unless that person's liability is established in his individual capacity. The bill as passed by the Senate did not contain a comparable provision. Under the conference agreement the House provisions are adopted.

Government representation.—Both the House bill and the Senate amendment provide for the Secretary of Labor to be represented by attorneys appointed by him in civil actions arising under the Act, except for litigation before the Supreme Court and the Court of Claims. The conference agreement adds the qualification that "all such litigation shall be subject to the direction and control of the Attorney General." The new language was added in order to make clear that even though litigation is conducted by Labor Department attorneys, there is to be authority in the Attorney General to resolve

those situations where two or more agencies of the Federal government have varying positions with respect to issues in litigation and, in such situations, to assure that the government takes uniform positions before the courts. In addition, the Attorney General is to have authority concerning the presentation to the courts of the government's position with respect to such issues of general importance as the constitutionality of Federal laws. Under the conference agreement, it is intended that in civil litigation involving the Secretary of Labor under this bill, the Secretary, in the normal course, will be represented in court by the Solicitor of Labor and his attorneys, with appropriate arrangements being made between the Secretary of Labor and the Attorney General with respect to the active involvement of the Justice Department in the types of situations discussed above.

Reports to Congress.—Under the bill as passed by the House, the Secretary of Labor is to report annually to the Congress regarding the administration of title I. This report is to include an explanation of the variances granted, a status report on any plan operating with a variance and its progress in achieving compliance with the Act, the projected date for terminating the variance and information, and recommendations for further legislation in connection with matters covered by title I. Under the conference agreement, the provisions of the bill as passed by the House generally are adopted.

Cooperation between agencies.—Under the bill as passed by both the House and the Senate, the Secretary of Labor is authorized to cooperate with other agencies and make agreements for mutual assistance. In addition, under the bill as passed by the House, the Attorney General is authorized to receive from the Secretary of Labor for appropriate action evidence which has been developed that warrants consideration for criminal prosecution under Federal law. Under the conference agreement, the provisions for cooperation of other agencies including the authorization for the Attorney General to receive matters relating to criminal prosecution is adopted.

Administrative matters.—Under the bill as passed by the House, the Administrative Procedure Act is applicable to the provisions of title I. In addition, no employee of the Department of Labor is to administer or enforce title I with respect to any employee organization of which he is a member or employer organization in which he has an interest. The bill as passed by the Senate does not add any comparable provisions. Under the conference agreement, the provisions of the bill as passed by the House are adopted.

Interference with rights.—Under the bill as passed by both the House and the Senate, it is unlawful to interfere with the attainment of any rights to which a participant or beneficiary may become entitled or to coercively interfere through the use of fraud, force, or violence with any participant or beneficiary for the purpose of preventing him from exercising any right to which he is or may become entitled to under the plan or title I. The penalties and degrees of proof for violations of the provisions are somewhat different. Under the conference agreement, the participant or beneficiary may bring a civil action against any person who interferes with his rights which are protected under the Act. In addition, any person who willfully uses

fraud, force, violence or threats to restrain, coerce or intimidate any participant or beneficiary for purposes of interfering with the participant's or beneficiary's rights under the plan or title I of the Act is to be fined $10,000 or imprisoned for not more than 1 year, or both.

Advisory Council.—Under the bill as passed by both the House and the Senate, there is established an Advisory Council on Employee Welfare and Pension Benefit Plans. Under the conference agreement, the Council is to consist of 15 members appointed by the Secretary of Labor. Not more than 8 members are to be of the same political party. The Council is to be made up of members who are to be representatives of employee organizations and employers, and members from the fields of insurance, corporate trusts, actuarial counseling, investment counseling, investment management, and accounting, and from the general public. Members are generally to serve for terms of 3 years, are to advise the Secretary of Labor with respect to the carrying out of his functions under the bill and are to submit to the Secretary recommendations as to the administration of the provisions of the bill.

Tax Court declaratory judgment proceedings

Both the House bill and the Senate amendment provide a procedure for obtaining a declaratory judgment with respect to the tax-qualified status of an employee benefit plan. Under both the House and Senate versions of the bill, jurisdiction to issue a declaratory judgment is given to the United States Tax Court. This remedy is available only if the Internal Revenue Service has issued a determination as to the status of the plan which is adverse to the party petitioning in the Tax Court, or has failed to issue a determination but the petitioner has exhausted his administrative remedies inside the Internal Revenue Service.

The differences between the bill as passed by both the House and the Senate are technical in nature. For example, the Senate amendment provides that the burden of proof is to be on the petitioner (the employer, plan administrator, or employee) as to those grounds set forth in the Internal Revenue Service determination; the burden of proof is to be on the Service as to any other grounds that the Service relies upon in the court proceeding (e.g., if the Service does not issue a determination as to the plan, then the Service is to have the burden of proof as to every ground as to which it relies). On the other hand, the House bill does not make specific provisions for burden of proof.

Under the conference agreement, the House provision is accepted with a number of amendments. The Pension Benefit Guaranty Corporation is permitted to be a petitioner, on the same basis as other petitioners. Employees are permitted to be petitioners if they qualify as interested parties under Treasury regulations and have exhausted their administrative remedies. It is contemplated that only those employees who are entitled to petition the Secretary of Labor under section 3001 of this Act are to be treated as interested parties. It is contemplated that the question as to who bears the burden of proof will be determined by the Tax Court under its existing rule-making authority. Under the existing Tax Court rules the taxpayer has the burden of proof as to matters in the notice of deficiency. As to matters raised by the Service at the time of the Tax Court hearing, the Service has the burden. It is expected that rules similar to these will be adopted by the Tax Court.

Under the House bill, the declaratory judgment provisions are to take effect on January 1, 1978. The bill as passed by the Senate provides that the declaratory judgment provisions are to take effect on January 1, 1975.

Both the House and Senate bills authorize the assignment of the declaratory judgment proceedings provided in this bill to be heard by commissioners of the Tax Court. They also authorize a commissioner to enter a decision of the court in these proceedings. The conference substitute provides for this same procedure, but in doing so the conferees wish to make clear that it is not intended that this be construed as indicating that all of these proceedings should be heard by commissioners and decisions entered by them rather than by the judges of the court. Instead, it is intended to provide more flexibility to the Tax Court in the use of commissioners in these types of cases. It is anticipated, for example, that if the volume of these cases should be large, that the Tax Court will expedite the resolution of these cases by authorizing commissioners to hear and enter decisions in cases where similar issues have already been heard and decided by the judges of the court or in other cases where, in the discretion of the court, it is appropriate for the commissioners to hear and decide cases.

Under the conference agreement, the declaratory judgment provisions are to take effect with respect to petitions filed more than one year after the date of enactment.

Administering office in Internal Revenue Service

Under the bill as passed by both the House and the Senate, there is established an Office of Employee Plans and Exempt Organizations, in the Internal Revenue Service, headed by an Assistant Commissioner of Internal Revenue, to administer the tax provisions with regard to employee benefit plans and other exempt organizations.

The House bill does not provide a compensation schedule for the employees of the new Office of Employee Plans and Exempt Organizations. The bill as passed by the House authorizes appropriations for this office in the amount of $20 million for fiscal year 1974 and $70 million for each fiscal year thereafter. However, the bill as passed by the House neither imposes nor earmarks any specific revenue source for this authorization of appropriations.

The bill as passed by the Senate provides for the Assistant Commissioner in charge of this office to be classified as GS–18 and that this is to be in addition to the number of positions at that level otherwise authorized for the Internal Revenue Service. Also the bill as passed by the Senate authorizes for the Service an additional 20 positions at the level of GS–17 and 16. The Senate amendment authorizes appropriations for each of the fiscal years 1974, 1975, and 1976 in the amount of $35 million plus one-half of the revenue of the private foundation investment income tax (under section 4940 of the Code). For each fiscal year thereafter the bill as passed by the Senate authorizes appropriations of amounts equal to the collections of a new excise tax on employee benefit plans ($1 per participant per plan per calendar year, beginning with 1974) plus one-half of the private foundation investment income tax collections.

The conference agreement accepts the Senate provision authorizing the Assistant Commissioner Office of Employee Plans and Exempt

Organizations to be classified as a GS–18 and providing to the Service an additional 20 positions in the level of GS–16 and 17. However, the conference agreement does not accept the Senate provision authorizing a new tax on employee benefit plans of $1 per participant. In place of the authorization of the new excise tax on participants, the conference provides a permanent authorization for fiscal year 1975 and for each fiscal year thereafter of an amount equal to the revenues from the private foundation investment income taxes if the rate of such tax was 2 percent plus an amount equal to that 2-percentage-point figure or $30,000,000, whichever is the larger.

Under the House bill, the provisions regarding the new office are to take effect 90 days after the date of enactment. Under the bill as passed by the Senate, no specified effective date is provided. The conference agreement accepts the House provision.

VII. Contributions on Behalf of Self-Employed Individuals and Shareholder-Employees (Sec. 2001 of the Bill and Secs. 401, 404, 1379, and 4972 of the Code)

Under the House bill the maximum limitations on deductions for self-employed individuals would be increased from 10 percent of their self-employment income, not to exceed $2,500, up to 15 percent of their self-employment income, not to exceed $7,500. In any event, a minimum of $750 would be deductible by self-employed individuals, without regard to the percentage limitations. The Senate amendment, although containing a number of technical differences, is generally similar to the House bill in this area.

The conference substitute is described below. Generally, the substitute in this case follows the House bill with respect to technical matters.

Specific contribution limits on proprietorships, partnerships, or subchapter S corporations

The conference substitute increases the maximum deductible contribution on behalf of self-employed persons to the lesser of 15 percent of earned income or $7,500. The same change is made as to excludable contributions on behalf of subchapter S corporation shareholder-employees. In applying the percentage limitation, not more than $100,000 of earned income may be taken into account. Self-employed persons (but not shareholder-employees) are permitted to set aside up to $750 a year out of earned income, without regard to the percentage limitation.

Defined benefit limits for proprietorships, partnerships, and subchapter S corporations

The substitute authorizes Treasury regulations to allow self-employed persons and shareholder-employees in effect to translate the 15-percent/$7,500 limitations on contributions into approximately equivalent limitations on benefits which individuals can receive under a defined benefit plan. In this respect, the substitute contains a table (based on certain interest and mortality rates) which will serve as a guideline for regulations. The Treasury Department may, by regulations, modify this table from time to time for years beginning after

December 31, 1977, to take account of changes in interest and mortality rates which occur after 1973.

The conference substitute also contains technical rules to prevent an individual from obtaining unintended high benefit accruals late in his career merely by establishing a "token plan" early in his career.

A plan which covers owner-employees is not permitted to use the defined benefit provisions unless it provides benefits for all participants on a nonintegrated basis (i.e., without taking social security benefits into account).

Excess contributions

Present law provides that excess contributions to an H.R. 10-plan on behalf of an owner-employee must be repaid from the plan and provides, in the case of a willful excess contribution, that the owner-employee is barred from participating in a qualified plan for 5 years. The conference substitute repeals these provisions and, in lieu thereof, the substitute imposes an excise tax of 6 percent on excess contributions to plans for the self-employed. The tax is payable by the employer who maintains the plan.

In the case of a defined contribution plan (for example, a money purchase pension plan) excess contributions include amounts contributed for the self-employed person in excess of the 15-percent/$7,500 limitations. (However, the tax would never exceed 6% of the assets of the account). In the case of a defined benefit plan, the tax is imposed where the plan is fully funded at the close of the employer's taxable year, and is imposed on the amount that has not been deductible for the taxable year or any prior taxable year. Also, in the case of either type of plan, excess contributions include voluntary contributions by owner-employees in excess of the allowable amount of such contributions.

The tax applies for the year in which the excess contribution is made and for every subsequent year that the excess contribution is outstanding. The excess contribution may be eliminated (so as to stop the running of the tax) in one of two ways—either by repayment of the excess contribution from the plan (which would reduce or eliminate the tax for subsequent years), or by a carryover of the excess payment and applying it against the amount allowable in the next year (or a subsequent year).

In the case of a defined benefit plan, the repayment would have to be made to the employer. In the case of a defined contribution plan, the repayment could be made either to the employer or to the employee (but, as under present law, a distribution could generally not be made to the employee from a money purchase plan until he attained retirement age). An excess voluntary contribution would be repaid to the owner-employee who made it. Of course, any distribution made to eliminate an excess contribution would not be in violation of the exclusive benefit rules of present law, or the fiduciary standards imposed under this bill.

The excess contribution could also be eliminated through means of a carryover. For example, if contributions of $10,000 were made to a plan (where voluntary contributions were not permitted) on behalf of a self-employed person (who was entitled to the full $7,500 deduction) the $2,500 excess contribution could be purged in the next year if

the contribution made on behalf of the individual in that year were limited to $5,000. In this case, the 6-percent tax would be imposed, but only once, because the excess contribution had been eliminated in the second year. Also in the second year the individual would be entitled to a deduction of $7,500 ($5,000 of contributions in that year, plus the $2,500 carryover). Of course, there would be no tax on underfunding under these circumstances even if the plan were a money purchase plan, the terms of which required a $7,500 contribution for the individual in the second year.

Premature distributions

The conference substitute increases the tax on premature distributions to 10 percent of the amount of the premature distribution (instead of 10 percent of the marginal regular tax on the premature distribution, as under present law).

Withdrawing of voluntary contributions by owner-employees

The conference substitute allows an owner-employee to withdraw his own voluntary contributions to an H.R. 10-plan before retirement without penalty. It also contains a technical amendment which repeals the "stacking" rules of section 72(m)(1) (i.e., the rules which determine the order in which different categories of income are deemed to be distributed). The conferees intend that distributions from an H.R. 10-plan to an owner-employee be treated first as repayments of any excess contributions made on his behalf, and second as withdrawals of voluntary contributions.

Effective dates

In general, the amendments with respect to H.R. 10-plans are to apply to taxable years beginning after December 31, 1973. The rule with respect to the $100,000 contribution base limitation is to apply to taxable years beginning after December 31, 1975, or, if earlier, the first year in which contributions under the plan exceed the deductible contribution limits of present law. The rules facilitating the use of defined benefit plans for the self-employed are to apply to taxable years beginning after December 31, 1975. The rules with respect to excess contributions are to apply to contributions made in taxable years beginning after December 31, 1975, and the rules with respect to premature distributions are to apply to distributions made in taxable years beginning after December 31, 1975. The rule permitting withdrawal of voluntary contributions by owner-employees is to apply to taxable years ending after the date of enactment.

VIII. Tax Deductions for Individual Retirement Accounts (Sec. 2002 of the Bill and Secs. 219, 408, 409, 4973, 4974, and 6693 of the Internal Revenue Code)

Under the House bill, individuals not covered by qualified or government pension plans (or sec. 403(b) annuity contracts) would be permitted to take a deduction of up to 20 percent of their earned income, not to exceed $1,500, for retirement savings. This amount could be set aside in a special trusteed or custodial account with a bank, savings and loan, or credit union, used to purchase an annuity contract, or invested in qualified retirement bonds. This amount could not be

drawn down without penalty before age 59½ (except in case of death or disability) and payment of benefits from the account would have to begin by age 70½. An individual could establish the account himself, or, alternatively, an employer or labor union could maintain accounts of this type for employees or members.

The provisions of the Senate amendment are similar in most respects. However, under the Senate amendment the allowable deduction could not exceed 15 percent of earned income, not to exceed $1,500. Moreover, under the Senate amendment, the assets of the account could be invested in life insurance contracts. Also, there is no provision in the Senate amendment for union-sponsored accounts.

The rules of the conference substitute are described below. In general it follows the House bill, except that the conference substitute accepts the Senate limitation of 15 percent—$1,500.

Deductions for contributions to IRSs

Under the conference substitute, the maximum annual deduction is to be $1,500, or 15 percent of compensation, whichever is less. Consequently, the percentage limitation for contributions to individual retirement accounts is the same as the percentage limitation for contributions to H.R. 10 plans (although the H.R. 10 plan has a $7,500 limitation on the amount which may be set aside in order to provide an incentive for the self-employed to establish qualified plans which will also benefit their employees).

This deduction is to be available to any individual who is not an active participant in a qualified or government plan, or a section 403(b) contract (available to employees of certain types of tax-exempt organizations) and is to be available whether or not the taxpayer itemizes his other deductions. The individual may himself make payments into such an account or this may be done by his employer or his union. If both husband and wife are eligible, each can make contributions to his or her own individual retirement account.

The conferees agree with the statement appearing in the report of the House Committee on Ways and Means (No. 93–807) that if an employee is given the option to elect not to be covered by a qualified, etc., plan and he so elects, generally he will not be treated as being an active participant in the plan for purposes of the retirement savings deduction. The conferees also agree with the statement in this report that where an employee who elects out of a qualified plan can elect later to become an active participant in it and can receive benefits for all prior years (for which he elected out) upon payment of, e.g., all mandatory contributions plus interest for prior periods, the employee is to be treated as being an active participant in the plan for the prior years with respect to which he pays the required amount and accrues benefits.

Requirements for an IRA

Under the conference substitute, the assets of an individual retirement account may be invested in a trusteed or custodial account with a bank, savings and loan, or credit union, or in an annuity contract, or in a qualified retirement bond.

In addition, the substitute allows a retirement savings deduction for amounts paid under certain life insurance endowment contracts (which will be treated as individual retirement annuities) to the

extent the amounts paid are properly allocable to retirement savings. However, only the retirement saving element in the contract, and not the part of the premium used to purchase life insurance, is to be deductible. For example, if a premium of $1,000 were paid under a qualified endowment contract, and $200 of this amount were allocable (under regulations) to the cost of the life insurance element, and $800 to the retirement savings aspect of the contract, then $800 would be allowed as a retirement savings deduction (if the individual were eligible for a deduction of this amount).

Under the conference substitute, the total amounts payable under qualified endowment contracts cannot be greater than $1,500 per year. However, an individual may contribute (and deduct) the difference between his maximum allowable retirement savings deduction and the retirement savings element under an endowment contract through another funding medium (such as a trusteed bank account). Under the conference substitute the insurance companies are to provide (before the close of the year) every individual who has purchased a qualified endowment contract with a statement as to the portion of the premiums which is deductible and the portion which is not deductible, as well as any other information required under regulations. A similar statement must be furnished to the Internal Revenue Service.

Insurance contracts are restricted to endowment contracts in order a provide a substantial savings element. The endowment contract also must be issued by a life insurance company qualified to sell insurance in the jurisdiction where the contract is sold (and may include no insurance element other than life insurance). In addition, the contract must mature no later than the taxable year in which the individual attains age 70½. The conferees intend that for an endowment contract to qualify, the premiums payable under the contract (for any given maturity value) are not to increase over the life of the contract, the cash surrender value of the contract at the maturity date is to be not less than the death benefit payable under the contract at any time, and the death benefit at some point during the life of the contract must exceed the greater of the cash value or the sum of the premiums paid under the contract.

Distributions from qualified endowment contracts are to be taxable as ordinary income to the extent allocable to retirement savings, and are to be taxed as life insurance proceeds to the extent allocable to life insurance. When a contract has matured, the full value of the contract will constitute retirement savings, and all amounts payable under a matured contract are to be taxed as ordinary income to the recipient (whether or not he is the individual who made contributions to the account and whether or not that individual is alive at the time the payments are made from the account).

Under the conference substitute, the assets of an individual retirement account may not be commingled with other property, except in a common trust fund or investment fund (i.e., a group trust), solely for the purposes of diversifying investments, under rules similar to those established in Rev. Rul. 56–267, 1956–1 C.B. 206. Also, following Rev. Rul. 56–267, the conferees intend that, solely for purposes of diversification of investments, the assets of qualified individual retirement accounts may be pooled with the assets of qualified section 401(a)

trusts, without adversely affecting the tax-qualification of either the individual retirement accounts or the section 401(a) trusts. The conferees intend that the group trust itself will be entitled to exemption from tax under the Internal Revenue Code in accordance with the rules of Rev. Rul. 56-267.

The conferees intend that this legislation with respect to individual retirement accounts is not to limit in any way the application of the Federal securities laws to individual retirement accounts or the application to them of the laws relating to common trusts or investment funds maintained by any institution. As a result, the Securities and Exchange Commission will have the authority to act on the issues arising with respect to individual retirement accounts independently of this legislation.

The conferees understand that the Internal Revenue Service anticipates developing a prototype individual retirement account which would include a full disclosure of all the material elements governing the retirement savings deduction. This prototype plan would qualify under the requirements for an individual retirement account. Other plans would be required to seek prior approval from the Internal Revenue Service and the conferees expect that one of the requirements for approval would be a disclosure statement of all the material elements governing the retirement savings deduction. The conferees also expect the Internal Revenue Service to develop a pamphlet which sets forth the restrictions and limitations with regard to the individual retirement accounts, including, for example, the penalties for premature distributions, the fact that the account is not eligible for estate and gift tax advantages or the lump-sum distribution rules that qualified plans are entitled to. It is the hope of the conferees that such pamphlet would receive wide distribution so that individuals would be fully informed on the restrictions and limitations of such an account. Also, in accordance with regulations to be prescribed by the Secretary of Treasury or his delegate, there is to be disclosure of such matters as load factors for insurance contracts and earnings factors for individual retirement accounts. These required disclosures are to be made in layman's language, and civil penalties are imposed under the substitute for failure to adequately disclose.

Requirements for an IRA annuity

Under the conference substitute, retirement savings may also be invested in annuity contracts. This may be an individual annuity contract, or a joint and survivor contract for the benefit of the individual and his spouse. The annual premium for the contract is not to exceed $1,500, and the contract is to be nontransferable and is not to be used as security for a loan. Also, distributions from the account must begin by the end of the year in which the individual attains age 70½.

Employer and union-sponsored IRA's

Under the substitute, employers and labor unions (and other employee associations) are to be able to establish individual retirement accounts for their employees or members. There is no requirement that the accounts must be established on a nondiscriminatory basis (since any employee not covered under an employer-sponsored account could establish his own account) but, of course, if the employer also main-

tains a qualified plan, he cannot satisfy the coverage requirements with respect to that plan by taking into account the fact that employees not covered under the plan are covered by individual retirement accounts. Even if the contributions are made by the employer, these amounts constitute income to the employee, and are subject to FICA and FUTA taxes. However, employer contributions are not to be subject to withholding for income tax purposes if it is reasonable for the employer to believe that the employee will be entitled to receive a deduction for the contribution.

Taxation of distributions—in general

Generally, the individual is to have a zero basis in his individual retirement account and the proceeds are to be fully taxable when distributed. These distributions are not to be eligible for capital gains treatment, or the special averaging rules applicable to lump-sum distributions from qualified plans (although the general averaging rules of sec. 1301 are to be available). Also, the amounts in individual retirement accounts are not to be excluded from tax for purposes of estate and gift tax.

Premature distributions

In the event of a premature distribution (or deemed distribution) from the account before the individual attains age 59½, the individual's tax on this amount is to be increased by 10 percent of the total distribution (except in the case of death or disability, or distributions of excess contributions made within the time for filing the individual's tax return for the year in which the excess contributions occur).

If an individual borrows money from an individual account (or from a group trust in which the account assets were invested) the entire account of the individual is disqualified, earnings on the account are no longer tax-exempt, and the participant is then to be taxed as if he had received a distribution of the fair market value of all the assets in his account. (If he borrows money, using his interest in the account as security, the portion used as security is to be treated as a distribution.) A similar result (i.e., deemed distribution of the entire account) would follow if the individual borrowed money from the insurance company issuing an annuity or endowment contract, or otherwise used the contract as security for a loan. Clearly, if the assets of the account were invested in such a way as to provide for the direct and immediate benefit of the participant (for example, if the account were used for a downpayment on the house where he lived) then the entire account would be deemed to be distributed. Of course, in the case of any deemed distribution from an individual retirement account, the amount of the distribution would not be includible in income a second time in a later year when the amount was actually distributed. (Questions of the order in which income is distributed where only part of the account is disqualified are to be determined under regulations.)

An individual may invest directly in an endowment contract but does not receive a deduction for the part of the premium which is allocable to life insurance protection. Thus, where the assets of an individual retirement account are invested in a qualifying endowment contract for the participant, this transaction is to be treated as an auto-

matic rollover by the account, and only the amount of the assets which are allocable to the purchase of life insurance protection under the endowment contract are to be deemed to be distributed to the participant. This amount would be includible in income by the participant, but would not be subject to the 10 percent tax on premature distributions.

Application of prohibited transaction and other taxes to IRA's

Generally, an individual retirement account is to be exempt from Federal tax, but the unrelated business income of the account, if any, is to be subject to tax (under sec. 511).

Under the House bill, individual retirement accounts generally would be subject to the prohibited transaction rules of present law. However, with respect to prohibited transactions, the conference substitute (generally following the Senate amendment) replaces present law with an excise tax on prohibited transactions (instead of using disqualification as a sanction) and changes the existing prohibited transaction rules. Consequently, the conference substitute applies the new prohibited transaction rules applicable to an owner-employee (e.g., no borrowing from the account is permitted) to individual retirement accounts, with respect to transactions involving the employer or union sponsor of the account, or other parties in interest.

However, if an individual participant engages in an unauthorized transaction with his individual retirement account then, as indicated previously, the sanction, in general, is disqualification of the account. In this case the assets of the account are to be deemed to be distributed, and the appropriate taxes, including the 10 percent additional tax on premature distributions, are to apply. However, the individual is not to be subject to the prohibited transaction excise taxes (of sec. 4975).

Thus, where there is a union or employer-sponsored account, and there is an individual retirement account trust covering more than one employee, only the employee who engages in the prohibited transaction is to be subject to disqualification of his separate account. However, if the employer (or union) sponsoring the account is the party engaging in a prohibited transaction, then the employer (or other party) will be liable for the excise tax, but the individual participants will not.

Excess contributions

In general, where contributions in excess of the deductible limits are made to an individual retirement account, no deduction is allowed for the excess amount, and this amount will be subject to a 6 percent tax for the year in which it is made, and each year thereafter, until there is no excess. The distribution is not to be includible in income if the excess is distributed to the individual on or before the due date for filing the employee's tax return for the year in question (including extensions). If the distribution occurs after that date, however, the distribution is to constitute taxable income to the employee (because his basis in his account is always zero) and will also give rise to a 10-percent additional tax if the distribution occurs before the employee is 59½.

The excess contribution may be removed by a distribution, or by underutilizing the allowable deduction limits for a later year. For

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example, if an employee contributed $3,000 in one year, and nothing the second year, then a 6 percent tax on $1,500 would be imposed only once (assuming the employee was entitled to a full $1,500 contribution for both years). (Similarly, if the participant withdrew the $1,500 excess contribution in the year in which the contribution was made, the 6 percent excise tax would be imposed only for that year.) Also (to prevent undue hardship resulting from bad investment experience), the tax may never exceed 6 percent of the assets in the account (but a decline in the asset value of the account does not remove the excess contribution and the 6 percent tax will be imposed until the excess contribution has been distributed or eliminated by underutilization of allowable contributions in a subsequent year).

A similar tax is to be imposed on excess contributions for section 403(b) plan investments in mutual fund stock (which are permitted under the conference substitute). (Section 403(b) allows deductions of up to 20 percent of salary, without regard to discrimination requirements, in the case of employees of educational and certain other types of exempt organizations.) However, the 6 percent tax is not imposed on section 403(b) annuity contracts, since earnings on annuity contracts are not taxable until distributed, even when the annuities are purchased outside the scope of a qualified plan.

No retirement savings deduction is to be allowed for contributions made during or after the year in which the individual attains age 70½, and contributions of an individual after attaining this age are to be treated as excess contributions.

Excise tax on excess accumulations

Under the conference substitute, distribution of the assets of an individual retirement account must begin by the year in which the participant attains age 70½, and must be distributed no less rapidly than ratably over his lifetime (or the lives of the participant and his spouse). To enforce this requirement, the substitute imposes an excise tax of 50 percent on the amount, if any, by which the amount of the distributions from the account fail to equal the minimum distribution required for the year in order to satisfy the age 70½ payout requirements.

Tax-free rollovers to facilitate pension transfers

To facilitate portability of pensions—or their transfer with the employee as he changes jobs—the conference substitute provides that money or property may be distributed from a tax-qualified plan or from an individual retirement account to the plan participant, on a tax-free basis, if the same money or property is reinvested by the participant within 60 days in a qualifying individual retirement account.

In the case of distributions from a qualified plan, the distribution must be a lump-sum distribution (see Part X, Lump-Sum distributions) to qualify as a tax-free rollover.

Amounts received from a qualified plan may also be transferred to another qualified plan through the medium of an individual retirement account (with the consent of the individual's new employer) but in this case the conduit retirement account must consist of nothing but assets transferred from a qualified plan (and the earnings on this

amount) to prevent a situation where retirement savings might indirectly obtain tax advantages not intended. (These qualified plan distributions may also be reinvested directly in the qualified plan of the individual's new employer on a tax-free basis, if the reinvestment occurs within 60 days after the individual receives the distribution.) However, an individual may have one individual retirement account for transferred savings from a qualified plan and another which represents a normal individual account set aside. For similar reasons, if the individual retirement account contains assets transferred from an H.R. 10 plan, on behalf of a self-employed person, no rollover is permitted from that retirement account to a qualified corporate plan.

Also, in the case of rollovers from a qualified plan, the amount contributed to the individual retirement account is to be the amount received, less the amount contributed to the plan by the individual as an employee contribution. (This is because the employee must always have a zero basis in his individual retirement account.)

Under the committee substitute, rollovers are permitted to and from qualifying investments in individual retirement bonds (discussed below) on the same basis as investments in other types of individual retirement accounts and annuities. At age 70½, the individual must cash in his bonds (since the proceeds of the bonds will be deemed to be distributed in full) but the assets may be rolled over into an investment which will satisfy the age 70½ payment requirements.

Tax-free rollovers between individual retirement accounts may occur only once every three years.

Qualified retirement bonds

Deductible employee savings may be invested in a special retirement bond to be issued by the Federal Government. Generally, the rules governing retirement bonds are closely comparable to the rules governing other forms of qualifying individual retirement savings. Thus, the bonds may be cashed prior to age 59½, but, except in the case of a rollover, the individual is generally to be subject to a 10 percent penalty tax (unless the bonds are cashed due to death or disability). However, the bond may be redeemed within 12 months of its purchase without penalty (and without payment of interest) and in this case the individual is not to be entitled to a deduction for the contribution.

The bonds are to cease to bear interest when the individual attains age 70½, and the proceeds of the bonds are to be deemed to be distributed in that year (whether or not the bonds are actually cashed in). However, as discussed above, the individual may roll the proceeds over into another qualifying form of individual retirement investment.

Other rules

The conference substitute provides that the proceeds of individual retirement accounts, etc., are to constitute retirement income for purposes of the retirement income credit. The substitute also includes the provisions of the Senate amendment that if a retirement account or annuity is transferred pursuant to a divorce settlement, the transfer is not to be taxable.

Effective dates

The deduction for retirement savings is to be available for taxable years beginning after December 31, 1974. The tax-free rollover of

assets between qualified plans applies to transfers after the date of enactment.

IX. Overall Limitations on Contributions and Benefits

(Sec. 2004 of the Bill and Secs. 401, 403 and 415 of the Internal Revenue Code)

Under the House bill, in general, in the case of defined benefit plans, the pension which may be paid from a qualified plan with respect to any individual may not exceed 100 percent of his compensation in his high three years of employment or $75,000, whichever is the lesser. In the case of defined contribution plans, the annual additions to an individual's account may not exceed the lesser of $25,000, or 25 percent of his compensation. (Both the $75,000 amount and the $25,000 amount referred to above are subject to cost-of-living allowances.) If an employee is under both a defined benefit plan and a defined contribution plan then the sum of (1) the percentage utilization of the maximum limit under the defined benefit plan, and (2) the percentage utilization of the maximum limit under the defined contribution plan, cannot exceed 140 percent.

Under the Senate amendment, benefits under a defined benefit plan are limited to 75 percent of the participant's high-three-consecutive-years of compensation, taking into account no more than $100,000 of compensation per year. A closely comparable limitation is provided for defined contribution plans, so that deductible contributions may not exceed amounts sufficient to fund a pension for the employee equal to 75 percent of his average high-three-years of compensation (not in excess of the first $100,000 in any one year). Where an employer had both a defined benefit plan and a defined contribution plan, the maximum benefit payable under the defined benefit plan would have to be reduced in proportion to the amount of the benefit which was funded through the defined contribution plan.

The conference substitute closely follows the provisions of the House bill. The detailed provisions of the conference substitute are discussed below.

Coverage of limitations

The conference substitute imposes an overall limitation (described below) on the contributions and benefits which are allowable under qualified pension, profit-sharing, and stock bonus plans and annuities (including H.R. 10-plans in cases where the overall limits are lower than the H.R. 10-plan limits). The overall limitation also applies to annuity contracts or mutual fund arrangements for employees of educational, charitable, etc., organizations or of public schools (i.e., sec. 403(b) annuities), as well as individual retirement accounts, annuities and retirement bonds.

Application to defined benefit plans

Under the conference substitute, in general, the highest annual benefit which can be paid (in the form of a straight-life annuity) out of a defined benefit plan to a participant is not to exceed the lesser of (a) $75,000, or (b) 100 percent of the participant's average compensation

in his high-three-years of employment. (Both of these ceilings are to be adjusted to reflect cost-of-living increases.)

In the event of retirement before age 55, the $75,000 ceiling (but not the 100 percent ceiling) is to be scaled down on an actuarial basis (but not below $10,000). In general, there is no required scale down for preretirement ancillary benefits (such as medical, death and disability), but there would have to be an adjustment for post-retirement ancillary benefits, such as term-certain annuities, post-retirement death benefits, or a guaranteed payment for a period of years.

If a benefit were paid in the form of a joint and survivor annuity for the benefit of the participant and his spouse, the value of this feature would not be taken into account unless the survivor benefit were greater than the joint benefit.

Upward adjustments in the benefit schedule would be permitted to reflect any employee contributions to the plan, including rollover contributions from another qualified plan or from an individual retirement account.

Also the substitute would provide a *de minimis* rule, which would allow a qualified plan to pay an annual retirement benefit of up to $10,000 per annum, notwithstanding the 100-percent limitation, or the required adjustment for certain ancillary benefits, to any employee who had not participated in a qualified defined contribution plan of the employer.

As a further adjustment to the rules described above, the maximum allowable defined benefit would have to be scaled down proportionately for an employee with less than 10 years of service.

Application to defined contribution plans

In the case of a defined contribution plan, the annual additions for the year are not to exceed the lesser of $25,000 (subject to an annual cost-of-living increase) or 25 percent of the participant's compensation from the employer. The term "annual additions" means the sum of (a) the employer's contributions, (b) the lesser of (i) one-half of all the employee's contributions, or (ii) the employee's contributions in excess of 6 percent of his compensation, and (c) any forfeitures which are added to the employee's account. Annual additions do not include rollovers from a qualified plan or individual retirement account. If forfeitures for a particular year could cause the plan not to meet these requirements with respect to a particular employee, these forfeitures must be reallocated to other participants in the plan (i.e., they may not be held in a suspense account), but regulations are to provide for the situation where none of the employees in the plan are eligible to receive forfeitures.

For purposes of the overall limitation, target benefit plans (i.e., plans where the employer establishes a target benefit for his employees, but where the employee's actual pension is based on the amount in his individual account) are to be treated as defined contribution plans. If the plan is a hybrid, i.e., part target benefit and part defined benefit, the plan will be treated as a defined contribution plan, for purposes of those rules, to the extent that benefits under the plan are based on the individual account of the participant. In the case of other plans which have characteristics both of a defined benefit plan and a defined contribution plan (such as a defined contribution plan with a guaranteed

benefit, or certain variable annuity plans) the Secretary or his delegate may prescribe regulations applying the limitations to the defined benefit of the plan, and the part of the plan in which benefits are based on individual account balances.

Application of limitation to combinations of plans

Under the substitute, where an employer has two or more plans, the overall ceiling is to be computed, in general, by aggregating similar plans (defined contribution or defined benefit) to determine if the limitation for that type of plan has been met on an overall basis (i.e., for purposes of this test a 1.0 fraction is used). If an employer maintains a defined benefit plan and a defined contribution plan, each plan would be subject to the limit appropriate to that type of plan ($75,000 or 100 percent benefits for the defined benefit plan, $25,000 or 25 percent contributions for the defined contribution plan); in addition, the two plans must be combined in computing the overall limitation.

To achieve this purpose, the substitute establishes a formula (to be applied each year to each employee) under which a defined benefit plan fraction for the year is added to a defined contribution plan fraction. Each fraction indicates what portion the participant has used of the maximum permitted limit for the kind of plan involved. If the sum of these fractions exceeds 1.4 then one or more of the plans will be disqualified.

The order in which plans are to be disqualified is to be determined under regulations. The regulations are to provide that no terminated plan may be disqualified until all other plans of the employer have been disqualified. However (unlike the House bill), the substitute does not require that plans having the fewest number of participants must be disqualified before plans having more participants because, in some cases, such a rigid rule might result in lower qualified plan benefits for the employees viewed as a whole.

Plans of all corporations, partnerships, or proprietorships which are under common control must be aggregated (using a 50-percent common control test).

Application of limitations to section 403(b) annuities for teachers or employees of tax-exempt organizations

In general, section 403(b) annuities are to be treated as defined contribution plans for purposes of the limitations. Thus, such plans would be subject to the 25 percent/$25,000 limitations which apply to other defined contribution plans, and also are to be subject to the limitations of present law under section 403(b) (20 percent of includable contributions, times years of service, minus all tax excludable contributions by the employer for annuities for prior taxable years).

However, under present law, certain categories of employees covered under section 403(b), such as teachers, typically have a pattern of low contributions in the early stages of their careers, with relatively high "catch-up" contributions made late in their careers. (Often section 403(b) plans operate on a salary-reduction basis.) In order to make allowance, for this problem, the conference substitute provides teachers, hospital employees, and employees of home health care institutions (which are tax-exempt and which the Secretary of Health, Education and Welfare has classified as a home health agency for pur-

poses of medicare) with a choice of three alternative rules which permit a significant amount of "catch up." The individual may elect the alternative he wishes to use (in a time and manner to be prescribed in regulations) and the election, once made, is to be irrevocable.

Under the first alternative (which may be used only once) at the time an employee separates from service he may use the catch-up rules of section 403(b) for the 10-year period ending on the date of his separation, without regard to the 25-percent limitation of section 415 (in other words, his exclusion allowance would equal 20 percent of current compensation, times 10, minus employer contributions already made for annuities for the 10-year period). The $25,000 limitation would apply, however.

Under the second alternative, which could be used each year by the employee, catch-up contributions otherwise permitted under section 403(b), could equal the lesser of 25 percent of current compensation, plus $4,000, or his exclusion allowance computed under section 403(b), but the deductible amount under this alternative could never exceed $15,000 for any one year.

For purposes of the overall limitations (sec. 415) in applying either of these two alternatives, the employee is not to be required to combine contributions to a 403(b) contract (which the participant would be deemed to control) with contributions by his employer to a qualified plan which he does not control (for example, a State wide plan for teachers). (Of course, the combination rules under section 403(b) of present law would not be changed.)

Under the third alternative, however, the employee would be permitted to come under the overall limitation (sec. 415) for all purposes (and the exclusion allowance of sec. 403(b) would not apply). This would mean that the employee would be covered under the overall limitation rules on combination plans, including the 1.4 fraction. For purposes of the combination rules both the employer and the employee would be deemed to have control of the 403(b) contract, but such a contract (which is to be treated as a defined contribution plan) could be combined with a State wide defined benefit plan, and benefits under the two plans, considered together, could equal 1.4 times the amount which could be provided under either plan when viewed separately.

If contributions to provide a section 403(b) annuity exceed the allowable limitations, the excess amounts must be included in income by the employee. Also, the employee's exclusion allowance under section 403(b) is to be reduced by the amount of the excess contribution (even though it was not excludable from the employee's income). If amounts are contributed for the purchase of mutual fund stock (which is permitted under another provision of the conference substitute), these amounts are to be subject to the 6 percent tax on overfunding until the excess is eliminated (see discussion above on individual retirement accounts). This tax is not imposed on contributions for annuity contracts, since earnings on these contracts are not taxed to the individual (until distributed) even when the annuity is not covered under section 403(b).

Treatment of benefits or contributions over the limitations

The House bill provided that benefits or contributions in addition to those allowable under qualified plans may be paid or accrued under

a qualified plan, if the contributions by the employer for the additional benefits were not deductible until they were includible in income by the employee.

The Senate amendment provided, in effect, that no retirement benefits could be paid, except from a qualified plan.

To avoid technical difficulties, the conference substitute omits both provisions. The conferees intend that, for tax purposes, additional benefits may not be paid from a qualified plan. However, for purposes other than tax law, a qualified plan and a plan providing additional benefits may be treated as one plan by the employer.

Applications of limitation where records not available

Under the conference substitute, the Treasury is authorized to prescribe reasonable assumptions which may be used by the employer in cases where the facts needed to compute the overall limitation are not known.

Application of limitation to existing cases

The conference substitute contains a provision which provides that an individual who is an active plan participant on or before October 2, 1973, may receive a pension equal to the lesser of (a) 100 percent of his annual compensation on that date (or on the date he separated from service with the employer), or (b) the benefit payable under the terms of the plan as in effect on that date (assuming no later change in compensation). If the regular rules of the (sec. 415) provision result in a higher limit (due to pre-retirement cost-of-living-increases, for example) than that allowable under this transition provision, the individual is to be entitled to the higher limitation. If an individual covered under this feature is also covered under a defined contribution plan, contributions may continue to be made to the defined contribution plan, to the extent that prior contributions to this plan (or other plans of the same employer), plus the defined benefit available under this feature (which may exceed 1.0 for these purposes), do not exceed the 1.4 fraction. In the case of a participant who separated from the service of the employer prior to October 2, 1973, the benefit allowed under this feature cannot exceed the indivdual's vested benefit on the date when he separated from service.

Aggregate deduction limits in the case of profit-sharing and pension plans, etc.

The conference substitute provides that carryover deductions of excess contributions in a combination pension and profit-sharing plan may not exceed 25 percent of aggregate compensation for any year (present law allows 30 percent). Also, the carryover of unused aggregate contribution limitations to a profit-sharing plan for any year is not to exceed 25 percent (compared to 30 percent under present law).

Timing of contributions

Under the substitute, contributions by cash basis taxpayers which are made by the time for filing the tax return for the year in question may be treated as paid in the year in question.

Effective dates

The new rules with respect to limitations on corporate plans are to apply to years beginning after December 31, 1975. (For purposes of

this provision the term "year" is to be defined in regulations.) In applying the limitations, contributions or accruals which occur before the effective date must, of course, be taken into account. For example, an employee with an accrued benefit of $60,000 on December 31, 1975, could accrue an additional benefit of $15,000 after that date (for a total benefit of $75,000) assuming that this was not in excess of the 100-percent limitation.

X. Lump-Sum Distributions (Sec. 2005 of the Bill and Sec. 402(e) of the Code)

General rule

Both the House bill and the Senate amendment treat the post–1973 taxable portion of a lump-sum distribution from a qualified pension, profit-sharing or stock bonus plan as ordinary income taxed under an averaging device which treats it as if it were received evenly over a period of years. Under the House bill, this special averaging treatment provides the treatment which would be applicable if the amount were spread over a period of 10 years, while the Senate amendment provides the treatment which would be applicable if it were spread over 15 years. Both the House and Senate versions treat the portion of the payment attributable to the pre–1974 period as long-term capital gain.

The conference substitute accepts the 10-year averaging period provided under the House bill. Both the House bill and the Senate amendment compute the ordinary income portion under the same general type of averaging device and this same general procedure is used in the conference substitute. The ordinary income portion is to be computed without regard to the taxpayer's other income (i.e., in effect it is taxed entirely separately as if this were the only income received by the individual). The tax rate schedule to be used in this separate-treatment approach is the schedule provided in the Code for unmarried individuals (whether or not the taxpayer is married). If the plan participant has service both before 1974 and after 1973, the amount attributed to the post–1973 service is the total taxable distribution times a fraction, the numerator of which is calendar years of active participation after 1973 and the denominator of which is total years of active participation. It is understood that the Treasury Department will provide regulations for allocating fractions of years for plan participants who have both pre–1974 and post–1973 value in lump-sum distributions.

The taxable portion of a distribution is to be the portion of the distribution attributable to employer contributions and to income earned on the account. The portion of the distribution representing the employee's contributions remains nontaxable.

Definition of a lump-sum distribution

The House bill would change the requirements used in determining what qualifies as a lump-sum distribution. The Senate amendment makes no changes in the existing rules on this subject. The conferees have accepted the new House rules.

Under existing law, a distribution generally is treated as a lump-sum distribution if it clears the employee's balance in a single trust, even though there are other trusts in that plan and even though the

employee receiving the distribution is a participant in several plans maintained by the same employer. The conference substitute retains the requirement that an employee's entire account be distributed. For this purpose, however, all trusts which are part of a plan are to be treated as a single trust. Furthermore, for this purpose all plans of a given category (the categories are pension plans, profit-sharing plans, and stock bonus plans) maintained by an employer are to be treated as a single plan.

The conference substitute also follows the House bill in permitting a distribution to an employee (common-law definition of an employee) after he attains age 59½ to be treated as a lump-sum distribution entitled to the special averaging and partial capital gain treatment, even though the recipient has not left his employment. Under present law, the age 59½ rule applies only to self-employed persons. This change from existing law is a part of the effort to eliminate to the extent feasible the distinctions between taxation of lump-sum distributions to regular employees and to the self-employed, as discussed below.

Multiple lump-sum distributions in one taxable year

The House bill requires that a taxpayer who wishes to use the special averaging and capital gains treatment described above for one lump-sum distribution must use that treatment for the aggregate of the lump-sum distributions he receives in the same taxable year. The Senate amendment and existing law contain no comparable provision. The conference substitute accepts the House rule.

Aggregation of distributions over six years

Both the House bill and the Senate amendment require that the lump-sum distributions received by an individual during a taxable year be aggregated with all lump-sum distributions to that recipient during his five prior taxable years, but only for purposes of determining the tax brackets in which the income is to be taxed. However, the House bill limits this five-year "lookback" rule to lump-sum distributions made after 1973. No similar provision is contained in the Senate amendment.

The conferees accepted this rule enunciated in both the House and Senate versions and also accepted the House bill restriction limiting the lookback aggregation to distributions made after 1973.

Treatment of distributions of annuity contracts

Both the House bill and the Senate amendment provide that a distribution of an annuity contract is to remain nontaxable, but must be included in the six-year aggregation computation described above in order to determine the tax bracket rates on a taxable lump-sum distribution. The House bill provides the annuity contract is to be included in the aggregation computation at its fair market value, while the Senate amendment fixes the value as the cash surrender value as of the time of the distribution.

The conference substitute, as in both the House and Senate versions, includes an annuity contract distribution within the aggregation computation, but continues to treat the annuity contract distribution itself as nontaxable.

The conference substitute provides that the value of an annuity contract for the purposes of the aggregation rule referred to above is to be its current actuarial value. Normally this will be sufficiently close to the cash surrender value of the annuity so that, under Treasury regulations, the cash surrender value (disregarding any loan on the policy) would be treated as the "current actuarial value". However, if the cash surrender value is artificially reduced, Treasury regulations may provide for a simplified method of determining the cash surrender value the annuity would normally carry. If the annuity contract has no cash surrender value, its current actuarial value is to be the present value of the payments anticipated under the annuity contract, computed with regard to the life expectancy of the recipient (and the life expectancy of the recipient's spouse, unless the recipient elects not to take the annuity as a joint and survivor annuity). The present value of these anticipated payments is to be determined under tables to be issued by the Treasury Department.

Recipients eligible for lump-sum distributions

The House bill provides that the only recipients of lump-sum distributions who may elect the special averaging treatment are individuals, estates, and trusts. The Senate amendment (and present law) place no restrictions on who may use the special averaging treatment. The conference substitute generally accepts the restrictions of the House bill, but with modifications in the case of lump-sum distributions to trusts.

Under the conference substitute, a lump-sum distribution may be made to multiple trusts, but, if this occurs, the tax paid on account of the distribution is to be the tax payable as if the entire distribution were made to one recipient, with the tax liability apportioned among the multiple trusts in accordance with the relative amounts received by each.

In cases of distributions to individuals and estates (in which instances an entire lump-sum distribution must be made to one recipient) the recipient is to make an election as to whether to claim the special averaging treatment. (The personal representative of the employee is to make the election if distributions are made to multiple trusts). This election is of significance because, as discussed below, only one election may be made with respect to an employee who has attained age 59½.

As under the House bill, the conference substitute provides that an employee must generally be regarded as the recipient, for purposes of the requirement of aggregation of all lump-sum distributions in a period of six taxable years, even if he or she causes the distribution to be made to a trust, if the employee retains such an interest in the trust as would require his taxation as the substantial owner of the trust under the present tax rules, even if the grantor of the trust is technically the employer or plan.[1]

In the House bill, a trust would be allowed to elect the special averaging treatment only if (1) the use of the trust would not affect the includibility of the distribution in the employee's gross estate, and

[1] If the lump-sum distribution is made to a recipient other than a trust during the employee's lifetime, it is intended that the usual assignment-of-income and constructive receipt rules are to apply to determine whether the employee is to be liable for the tax upon the distribution.

(2) the trust would be sole recipient of the entire balance to the credit of the employee. These provisions were not adopted by the conferees.

As indicated above, attainment of age 59½ is made a criterion of eligibility for a regular employee (as well as for a self-employed person, as under present law) for the special averaging lump-sum treatment under the conference substitute. It was not considered necessary, however, to specify that a beneficiary is entitled to the special averaging and partial capital gain treatment for a distribution on account of the death of an employee *after* his retirement (as well as before).[2]

Number of elections

The House bill allows the special averaging treatment to be elected freely until the employee attains age 59½, after which time only one election may be made with respect to that employee. The Senate amendment does not have an election procedure. As is the case under present law, the Senate version makes the treatment mandatory for lump-sum distributions and does not limit the number of times this special treatment may be used.

The conferees followed the House bill in allowing only one election with respect to an employee after he has attained age 59½. Thus, if an employee has made one election after attaining age 59½, he may not thereafter obtain the special averaging treatment for another distribution. As under present law, however, an employee, or his beneficiary, who is barred from the special averaging treatment by an earlier election may nevertheless gain the partial capital gain treatment for pre-1974 value if the distribution is made on account of the employee's death or separation from service. In addition, such an employee who receives a distribution because of attaining age 59½ may also receive the partial capital gains treatment although he is barred from the special averaging for the ordinary income portion.

A recipient who elects this special averaging treatment may still elect the usuual income averaging provided under sec. 1301.[3] A taxpayer who surrenders an annuity may use the normal 5-year income averaging and also may use the special averaging for lump-sum distributions.

Lump-sum distributions to the self-employed

Under the House bill, the same 10-year ordinary income averaging may be elected for distributions on account of plan participation by self-employed persons as may be elected on account of the participation of regular employees. (Under present law, lump-sum distributions to self-employed persons are taxed under special 5-year averaging provisions.) There is no comparable Senate provision.

The conferees accepted the House provision eliminating the distinction of treatment between regular employees and the self-employed in this respect. If they elect the special averaging treatment, self-employed persons are also entitled to capital gain taxation on the pre-1974 value of their lump-sum distributions.

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[2] Thus, no change in present law is intended by the deletion of references to this in sections 402(a)(2) and 403(a)(2)(A)(iii) of the code.

[3] H. Rept. 93–807, p. 150, which indicates that a common-law employee who uses the special averaging provided under present law may nevertheless also use the regular five-year income averaging for his other income and capital gain, is incorrect. Under the conference substitute, however, both types of income averaging may be used concurrently by both regular employees and the self-employed.

Computation of tax in lump-sum distribution

It is recognized that the computation of tax due on a lump-sum distribution with an annuity lump-sum distribution, as reflected in the reports of the House Ways and Means Committee and the Senate Finance Committee, is incorrect in that it subtracts the entire minimum distribution allowance from the amount of the annuity, instead of subtracting only that portion of the minimum distribution allowance that is proportionate to the amount of the annuity distribution as compared with the total distribution. This incorrectly increases the tax on the taxable distribution because it minimizes the tax attributable to the annuity distribution. The less the tax attributable to the annuity distribution, the larger is the tax attributable to the taxable distribution.

The correct computation is as follows:

First example.—On December 31, 1975, A terminates his services and receives a lump sum distribution of $65,000 from a qualified plan. The distribution includes employer securities with a fair market value of $25,000 and a basis of $10,000. A has been participating in the plan since January 1, 1966. The plan is noncontributory. A is married; both A and his wife are 50. Their only other income is A's salary of $15,000 and his salary from a second job ($5,000). Their itemized deductions are $3,000. Their average base period income (for purposes of regular income averaging) from the preceding four years (1971 through 1974) is $14,000.

The tax on the portion of the distribution which is not treated as a long-term capital gain is computed as follows:

Net distribution ($65,000 total distribution less $15,000 unrealized appreciation on employer securities)	$50,000
Less: Minimum distribution allowance: 50 percent of first $20,000	$10,000
Reduced by: 20 percent of net distributions in excess of $20,000	6,000
	4,000
Distribution less allowance	46,000

The tax on $\frac{1}{10}$th of the distribution less allowance computed from the tax rate schedule for single taxpayers is $816.00.

Multiply this amount by 10: $8,160.00.

Then, multiply by the fraction,

$$\frac{\text{Years of participation in plan after 1973}}{\text{Total years of participation}} = \frac{2}{10} = 0.2$$

which yields $1,632.00.

Thus, the tax on the ordinary income portion of the distribution is $1,632.00.

The amount of the distribution taxed as a long-term capital gain is the amount of the net distribution multiplied by the fraction,

$$\frac{\text{Years of participation before 1974}}{\text{Total years of participation}} = \frac{8}{10} = 0.8$$

Net distribution	$50,000
Capital gains element	40,000

The capital gains element is taxed along with other income (exclusive of the ordinary income element) in the normal way. The tax on the taxable income of $35,500 ($15,000 salary from first job, plus $5,000 from second job, plus $40,000 capital gains element of lump-

sum distribution, less $20,000 capital gains exclusion, less $3,000 itemized deductions, less two $750 personal exemptions) is calculated using the tax rate schedule for married taxpayers filing joint returns. In this case the alternative tax on capital gains is not available, but the regular-five-year income averaging provisions are.

Ordinary tax	$10,130.00
Tax—Using regular income averaging [1]	8,828.00

[1] As indicated above, average base period income is $14,000.

Selecting the tax computation method which yields the smallest amount of tax, A uses the regular five-year income averaging method and has a tax of $8,828.00.

Finally, A combines the tax on the capital gains portion of the distribution and his salary, with the tax on the ordinary income portion of the distribution:

Tax on salary and capital gains portion of distribution	$8,828.00
Tax on ordinary income portion of distribution	1,632.00
Total 1975 income tax	10,460.00

A's basis in the employer securities is $10,000.

Second example.—On December 31, 1976, A receives a distribution from a qualified plan with respect to his second job. In this case the distribution is a nontransferable annuity contract, the value of which is $6,000; and a cash distribution of $4,000 financed solely by the employer. A had participated in the plan since January 1, 1967. Mr. and Mrs. A's only other income in 1976 is A's salary of $25,000 and interest of $3,000 on the $40,000 cash received in the prior lump-sum distribution. They have itemized deductions of $2,100. Mr. and Mrs. A's 1976 tax is computed as follows:

First, compute the tax on the portion of the distribution which is not treated as a long-term capital gain and which is taxed separately.

Step 1:		
1976 cash distribution		$4,000
1976 annuity contract		6,000
Prior year net distribution		50,000
Total		60,000
Less: Minimum distribution allowance: 50 percent of first $20,000		$10,000
Reduced by: 20 percent of net distribution in excess of $20,000		8,000
Total		2,000
		58,000

Ten times the tax on one-tenth of $58,000 (from the rate schedule for single taxpayers) is $10,680.

Step 2:		
1976 annuity		$6,000
Minimum distribution allowance from step 1	$2,000	
Portion of minimum distribution allowance attributable to annuity distribution $\frac{\$6,000}{60,000} \times$ -2,000=$200	200	
Remainder		5,800

Ten times the tax on one-tenth of $5,800 (from the rate schedule for single taxpayers) is $820.

Step 3: $10,680.00—$820=$9,860

Step 4:

Determine ordinary income and capital gains elements of A's distribution and his prior year distribution. The ordinary income element of A's latest distribution is determined by multiplying the cash distribution of $4,000 by:

$$\frac{\text{Years of participation in plan after 1973}=3/10=0.3}{\text{Total years of participation}}$$

Thus, A's ordinary income element is $1,200. $10,000 of Mr. A's prior distribution of $50,000 was ordinary income.

Thus, the tax on the ordinary income element is the fraction of the tax from Step No. 3 which the ordinary income elements of the 1976 and prior year distributions bear to the entire distributions.

$$\left.\frac{\$1,200+\$10,000}{\$4,000+\$50,000}\right\}\times\$9,860=\$2,045.04$$

Step 5:

The tax on the ordinary income element of A's 1975 distribution from their 1975 income tax income return was $1,632.00. Subtracting that from the tax calculated in Step No. 4 yields the tax on the ordinary income element of A's latest distribution:

$$\$2,045.04-\$1,632.00=\$413.04$$

Second, compute the tax on all other income, including the capital gains portion of the distribution.

Step 6:

In Step No. 4, the ordinary income element of the distribution was calculated as $1,200. Therefore, the long-term capital gains element is:

$$\$4,000.00-\$1,200=\$2,800.00$$

Step 7:

The capital gains element is taxed along with other income in the regular manner.

Capital gains element	$2, 800
Less: 50 percent of net long-term capital gain	1, 400
Total	1, 400
Salary	25, 000
Interest	3, 000
Adjusted gross income	29, 400
Less: Itemized deductions	2, 100
Less: Personal exemptions (2×$750)	1, 500
Taxable income	25, 800

The tax on $25,800 is calculated using the tax rate schedule for married taxpayers filing joint returns. In this case, neither the alternative tax on capital gains nor the regular five-year income averaging provision is available.

Ordinary tax	$6, 308. 00

Third, A combines the tax on the capital gains portion of the distribution and his other income, with the tax on the ordinary income portion of the distribution.

Step 8:

Tax on capital gains portion of distribution and on other income	$6,308.00
Tax on ordinary income portion of distribution	413.04
Total 1976 income tax	6,721.04

If in the examples above, A has attained age 59½, he may elect to treat only one of the distributions as a lump-sum distribution qualifying for ten-year averaging. In computing the tax liability on the distribution which he elects to qualify for ten-year averaging, A will not aggregate any distribution (except in the case of a distribution of an annuity contract) made after attaining age 59½ which is not treated as a lump-sum distribution for purposes of the ten-year averaging.

XI. Salary Reduction and Cash or Deferred Profit-Sharing Plans (Sec. 2006 of the Bill)

Under present law, in general, an employee's contributions to a qualified retirement plan maintained by his employer are not tax deductible. In the case of a salary reduction plan, or a cash or deferred profit-sharing plan, however, the Internal Revenue Service has permitted employees to exclude from income certain amounts contributed by their employers to the plan, even where the source of these amounts is the employee's agreement to take salary or bonus reductions, or forego salary increases.

On December 6, 1972, the Service issued proposed regulations which would have changed this result in the case of salary reduction plans, and which called into question the continued viability of the treatment of cash and deferred profit-sharing plans.

In order to allow time for congressional study of these areas, the conference substitute provides for a temporary freeze of the status quo. Thus, contributions to plans in existence on June 27, 1974, are to be governed under the law as it was applied prior to January 1, 1972. This treatment is to continue at least through December 31, 1976, or (if later) until regulations are issued in final form in this area, which would change the pre-1972 administration of the law. These regulations, if issued, are not to be retroactive for purposes of the social security taxes or the Federal withholding taxes, and are not to be retroactive prior to January 1, 1977, for Federal income tax purposes.

In the case of plans not in existence on June 27, 1974, contributions made on a salary reduction basis, or made, at the employee's option, to a cash or deferred profit-sharing plan, are to be treated as employee contributions (until January 1, 1977, or until new regulations are prescribed in this area). This will prevent a situation where a new plan might begin in reliance on pre-1972 law while Congress has not yet determined what the law should be in the future.

Generally a plan will be treated as having been established on June 27, 1974, if the plan had been reduced to writing and had been adopted and approved by the directors on or before that date, even if contributions had not yet been made to the plan on a salary reduction basis.[1] New participants may, of course, be added to an existing plan in the normal course of business.

[1] Where shareholder approval is required for formal adoption of the plan, such shareholder approval must also have occurred by June 27, 1974.

Also to be covered under these principles are so-called cafeteria plans, under which the employees may have a choice between certain fringe benefits, some of which would constitute taxable income to the employee, whereas other forms of benefit might not. Thus, existing cafeteria plans also are to be governed under pre-1972 law until at least January 1, 1977. However, in the case of new plans, the value of any benefits selected under a cafeteria plan are to be includable in income until at least January 1, 1977 (or, if later, until new regulations in this area have been promulgated). In general, the same rules to be applied in determining whether or not a salary reduction plan was in existence on June 27, 1974, are also to be applied to cafeteria plans. Of course, minor plan amendments (such as changing the plan to allow cash payments to cover cases of breakage, i.e., where two alternative benefits available under the cafeteria plan do not have exactly the same value) would not cause an existing plan to be classified as a new plan for purposes of these rules.

The conferees agree with the statements in the Ways and Means Committee report (No. 93–807) to the effect that there should be no inferences drawn from this action as to whether or not the pre-1972 application of the law is, or is not, correct, or as to whether new regulations in this area should, or should not, be issued, or as to what these regulations, if any, should provide.

XII. General Provisions Relating to Jurisdiction, Administration, Enforcement; Joint Pension Task Force, Etc. (Sec. 3001–3004, 3021–3022, 3031, 3041–3043 of the Bill)

General provisions relating to jurisdiction, administration and enforcement

Under the bill and amendment as passed by the House and the Senate jurisdiction with respect to the requirements for plans seeking tax benefits under the Internal Revenue Code is basically with the Internal Revenue Service. In addition, the bill and amendment as passed by the House and the Senate provides jurisdiction to the Secretary of Labor to enforce standards for plans which do not seek special tax benefits under the Internal Revenue Code, and to enforce certain standards as they apply to tax-qualified plans.

Under the conference substitute, procedures are established which will provide a significant and appropriate role in the enforcement of the participation, vesting, and funding standards to both the Department of Labor and the Internal Revenue Service (with respect to plans which seek qualification under the Internal Revenue Code) without a duplication of effort on the part of the two departments. In addition to the specific areas of the conference substitute where areas of jurisdiction are delegated to one department or the other, the conference substitute provides general guidelines for the coordination of administration and enforcement.

The administration of qualified plans is separated into two stages: first, the stage when the plan seeks from the Internal Revenue Service initial qualification of entitlement to special tax benefits under the

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Internal Revenue Code; second, the operational stage with respect to the continued eligibility of the plan for the special tax benefits.

Initial stage jurisdiction.—In determining whether a pension, profit-sharing, or stock bonus plan or a trust which is a part of such a plan, is initially entitled to the special tax benefits provided under the tax law, the Secretary of the Treasury is to require that the person applying for the initial qualification of the plan is to provide, in addition to any materials and information which would generally be necessary for the administration of the tax laws, such other forms and information as may reasonably be made available at the time of the determination as the Secretary of Labor may require. The Secretary of the Treasury is also to require that the applicant for a determination provide evidence that any employee who is an interested party with respect to the plan has been notified of the request for a determination. Also the Secretary of the Treasury is to notify the Secretary of Labor and the Pension Benefit Guaranty Corporation when he receives an application for a determination as to the tax status of a plan.

The Secretary of the Treasury when he makes a determination with respect to a plan or trust is to notify the Secretary of Labor of his determination and furnish to the Secretary of Labor the forms and information submitted for the Secretary of Labor. For this purpose a determination includes a determination that a plan is, or is not, qualified for the special tax benefits under the Internal Revenue Code. The Secretary of the Treasury is also to notify the Secretary of Labor if a request for a determination is withdrawn.

Under the conference substitute, the Secretary of the Treasury is to afford the Secretary of Labor an opportunity to comment on the initial determination in any case involving the participation or vesting standards in which the Secretary of Labor requests such an opportunity. It is expected that the two departments will set up procedures implementing this procedure in a manner which affords the Secretary of Labor an ample opportunity to comment but which does not cause undue delay in the granting of initial determinations. A request by the Secretary of Labor to comment upon an application for an initial determination is to be made only upon the request (in writing) of the Pension Benefit Guaranty Corporation or on the request of 10 employees (or 10 percent of the employees if lesser) who would be viewed as interested parties under the plan. A copy of the request submitted to the Secretary of Labor is to be transmitted by him to the Secretary of the Treasury within 5 business days of its receipt.

If the Secretary of Labor does not submit comments on behalf of such groups of employees within 30 days after receiving a petition from the necessary number of interested employees, the Secretary of the Treasury is to afford these interested employees a reasonable opportunity to comment upon the initial request for a determination. The above procedure for enabling employees to comment upon an application for a determination is not the exclusive means by which employees may participate in the determination proceedings. Employees may of course proceed on their own through the declaratory judgment provisions which are provided in the bill. The Pension Benefit Guaranty Corporation and the Secretary of Labor (upon petition by the required number of employees) may intervene in any

declaratory judgment proceedings in the Tax Court whether the proceedings are brought on behalf of the employer or interested employees. In addition, the Pension Benefit Guaranty Corporation is to be entitled to bring a suit for a declaratory judgment under rules to be prescribed by the Tax Court.

If a plan is qualified by the Secretary of the Treasury, the plan is to be treated as meeting the initial requirements of the Secretary of Labor with respect to participation and vesting.

The above outlined procedures apply not only to the initial qualification of a plan which seeks the special tax benefits provided under the Internal Revenue Code but apply to a request for an IRS determination with respect to any amendment to the terms of a plan or a trust which seeks a favorable determination from the Internal Revenue Service.

Operational stage jurisdiction.—The conference substitute also provides procedures for the exercise of the respective jurisdictional authority of the departments with respect to plans qualified for special tax treatment under the Internal Revenue Code during their operation. The Secretary of the Treasury in carrying out the administration of the Internal Revenue Code with respect to any plan or trust is to examine the plan to determine whether the plan satisfies the requirements relating to minimum participation standards and minimum vesting standards (in secs. 410(a) and 411 of the Code).

The Secretary of the Treasury is to notify the Secretary of Labor before commencing any proceedings to determine whether the plan or trust is in compliance with the minimum vesting and participation standards. While the notice need not be made prior to the time the Internal Revenue Service begins an audit or a review of a plan to verify that the minimum standards have been satisfied, it is expected that if in the course of a review or audit doubts or questions are raised by the Internal Revenue Service as to whether the plan has met the minimum standards, the Secretary of the Treasury is to notify the Secretary of Labor. Notification is to be made prior to the time the Internal Revenue Service issues a 30-day letter of an intention to disqualify the plan or trust. Except in cases of jeopardy the Secretary of the Treasury is not to issue a determination that the trust or plan does not satisfy the minimum standards until the expiration of a period of 60 days after the date on which he notifies the Secretary of Labor. This period of time is provided for the Secretary of Labor so that, if he chooses to do so, he may examine the plan to determine whether he should begin to take any action to compel compliance under those portions of the participation and vesting provisions of the bill in which he has jurisdiction or to coordinate any action he may be required to take by reason of a complaint from a participant or beneficiary. This 60-day period may be extended by the Secretary of the Treasury if he determines that an extension of this period would enable the Secretary of Labor to obtain compliance with the requirements of the law during this extended period. In order to assist the Secretary of Labor in deciding whether he should seek compliance with the requirements of the law the Secretary of the Treasury is to provide the Secretary of Labor with copies of any notices which he issues to the plan administrator with respect to the minimum participation and vesting standards.

The Secretary of the Treasury in administering the provisions relating to taxes on the failure to meet minimum funding standards (sec. 4971 of the Internal Revenue Code) is to notify the Secretary of Labor before imposing any tax on an employer. In addition, prior to the imposition of the tax, in other than jeopardy situations, the Secretary of the Treasury is to afford the Secretary of Labor an opportunity to comment on the appropriateness of imposing the tax. After consultation with the Secretary of Labor, the Secretary of the Treasury may in appropriate cases waive or abate the 100 percent excise tax on failure to satisfy the minimum funding standards. In order to coordinate their respective responsibilities under the funding standards, it is anticipated that both Secretaries will consult with each other as is needed with respect to the provisions relating to minimum funding standards, both those provided in the Internal Revenue Code and the funding standards provided by title I. As part of this coordination, at the request of the Secretary of Labor or the Pension Benefit Guaranty Corporation, the Internal Revenue Service is to initiate an immediate investigation with respect to any liability for the tax on failure to meet the minimum funding standards.

If the Secretary of Labor or the Pension Benefit Guaranty Corporation seek compliance on any case involving the construction or application of the minimum participation, vesting or funding standards, a reasonable opportunity is to be afforded to the Secretary of the Treasury to review and comment upon any proposed pleadings or briefs before they are filed. Of course, the Secretary of Labor need not obtain the approval of the Secretary of the Treasury and the Secretary of the Treasury may intervene and file his own pleadings or briefs in any case.

The Secretary of the Treasury in carrying out the provisions relating to tax on prohibited transactions (sec. 4975 of the Internal Revenue Code) is to inform the Secretary of Labor before imposing the tax under that section. In addition, the Secretary of Labor is to be afforded an opportunity, in other than jeopardy situations to comment on the appropriateness of imposing the tax. After consultation with the Secretary of Labor, the Secretary of the Treasury may in appropriate cases waive or abate the 100 percent excise tax on failure to correct a self-dealing violation. It also is anticipated that both Secretaries will consult as is needed with respect to the provisions relating to prohibited transactions (including the exemptions which may be provided therefrom) in order to coordinate the rules applicable under these standards. To best coordinate these rules the two Secretaries may want to set up a board to review and coordinate these rules. As part of this coordination, the Internal Revenue Service at the request of the Secretary of Labor or the Pension Benefit Guaranty Corporation is to initiate an immediate investigation with respect to the liability of any person for the tax on prohibited transactions.

Issuance of regulations.—Under the conference substitute the Department of the Treasury is to prescribe the necessary regulations under the general provisions relating to participation, vesting, and funding except where specific authority is given to the Secretary of Labor to prescribe the regulations. For example, the Secretary of Labor is to prescribe regulations defining what con-

stitutes a year of service for purposes of the participation and vesting standards of the Act. Regulations which are prescribed by the Treasury or Labor Departments in those areas in which jurisdiction is assigned to them are to be binding upon the other department (unless provided otherwise by the bill). Where the final authorization to prescribe regulations under a provision is provided to one department or the other, it is expected that the two departments will consult and coordinate closely with each other in prescribing the necessary regulations which need to be issued under the various provisions of the bill.

Under the conference substitute whenever in the bill the Secretary of the Treasury and the Secretary of Labor are required to carry out provisions relating to the same subject matter, they are to consult with each other in the developing of rules, regulations, practices and forms to the extent possible for the efficient administration of the provisions in order to reduce to the maximum extent practical, duplication of effort, conflicting requirements and the burden of compliance (including the annual reports which must be filed by the plan administrators). The two Secretaries may make arrangements or agreements for cooperation and mutual assistance in the performance of the functions they have under the bill as they find practicable and consistent with the law. The maximum coordination is expected in those areas where one agency has the authority to prescribe regulations and also, of course, where the regulations are to be a cooperative effort of both agencies.

Joint task force and studies

Under the bill, as passed by the House, the Secretary of Labor is to undertake studies relating to private pension plans, including the cost impact of the bill on pension plans, the role of pension plans in providing economic security, the operation of pension plans, and methods of encouraging the growth of the private pension system. In addition, the Committee on Education and Labor and the Committee on Ways and Means are to undertake studies of retirement plans financed or maintained by the United States, or by State and local governments. This study is to include consideration of the adequacy of the participation, vesting, and fiduciary standards, as well as financing and funding methods. In studying whether the funding standards of the bill should be imposed on government plans the study is to take into account the taxing power of the governmental unit maintaining the plan. The two committees are to report the results of the governmental study to the House of Representatives by December 31, 1976.

Under the bill as passed by the Senate, the Secretary of Labor is authorized to undertake the studies relating to employee benefit plans which are generally similar to the studies provided for in the bill as passed by the House. However, the bill as passed by the Senate authorizes the Secretary of Treasury to undertake the study of governmental plans and report to the Committee on Finance and the Committee on Ways and Means by December 31, 1976.

Under the conference substitute the staffs of the Committee on Ways and Means and the Committee on Education and Labor of the House, the Joint Committee on Internal Revenue Taxation, and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate are to carry out duties assigned to the Joint Pension

Task Force. By agreement among the Chairmen of these committees, the Joint Pension Task Force is to be furnished with office space, clerical personnel, actuarial and other consultants, and the supplies and equipment which are necessary for the Task Force to carry out its duties. The Joint Pension Task Force is authorized to engage in specified studies and make a report to the abovementioned committees within 24 months after the date of enactment of the bill. In addition, the Joint Pension Task Force is to study any other matter which any of the committees referred to above may refer to it.

The Joint Pension Task Force is specifically authorized to engage in four studies. First, it is to study and review the three vesting alternatives in the bill to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of these provisions. (The results of this study are to be reported only to the tax committees.) Second, it is to study the means of providing for the portability of pension rights among different pension plans. Third, it is to study the appropriate treatment under the termination insurance provisions of the Act for plans established and maintained by small employers. Fourth, it is to study the effects and desirability of the pre-emption of State law provisions of the bill. In addition elsewhere in this statement it is indicated that the Joint Pension Task Force is to study the effect of the rules in this bill limiting the extent to which antidiscrimination rules may be enforced through additional requirements as to early vesting and the effect on benefits and costs of integrating social security benefits with the benefits payable under retirement plans.

The substitute agreed to by the conferees also provides for a congressional study of retirement plans established and maintained, or financed, by the Government of the United States, by any State (including the District of Columbia), or any political subdivision thereof. The study is to include an analysis of the adequacy of existing levels of participation, vesting, and financing arrangements; existing fiduciary standards; and the unique circumstances affecting mobility of government employees and individuals employed under Federal procurement contracts. In considering whether plans are adequately financed consideration shall be given to the necessity for minimum funding standards as well as the taxing power of the government maintaining the plan. This study is to be submitted not later than December 31, 1976, by the Committee on Education and Labor and the Committee on Ways and Means to the House of Representatives and by the Committee on Finance and the Committee on Labor and Public Welfare to the Senate.

Enrollment of Actuaries

Standards.—The House bill requires that reasonable standards and qualifications are to be established for enrolling actuaries to practice, and specifies the standards that are to be applied for enrolling actuaries to practice. Under the Senate amendment, reasonable standards and qualifications are to be established for enrollment to practice, but the standards to be used are to be determined in regulations.

The conference substitute largely follows the provisions of the House bill. With respect to persons applying for enrollment before

January 1, 1976, the substitute provides that the standards and qualifications are to include a requirement for "responsible actuarial experience relating to pension plans," and deletes the requirement for experience in the "administration" of pension plans. This change is intended only to clarify the application of the standards before January 1, 1976, so that persons who apply for enrollment before that date have responsible actuarial experience (and not only administrative experience) relating to pension plans. With respect to persons who perform actuarial services for smaller and simpler plans, the conferees anticipate that, to the extent feasible, the standards for enrollment will make it possible to use standard actuarial tables and standard earnings assumptions whether or not the actuary's training includes the highest level of actuarial skills. The limited number of persons with a high level of actuarial skills makes it desirable that the standards acceptable for persons examining smaller and simpler plans need not be as restrictive as in the case of those examining the larger plans.

The conference substitute also provides that actuaries may be enrolled on a temporary basis for a limited period. This makes it clear that actuaries can be enrolled almost immediately after enactment of the bill in order that enrolled actuaries will be available to help plans meet the requirements of the new law. The conferees intend that such temporary enrollment is not to be in lieu of any special enrollment standards for persons who apply for enrollment before January 1, 1976, but is only to allow immediate enrollment before the final standards are established.

Procedures.—The House bill provides for separate enrollment of actuaries by the Department of Labor (title I) and the Internal Revenue Service (title II). However, the House bill also provides that standards for enrollment after January 1, 1976, are to be established by joint regulations. The Senate amendment provides for enrollment only before the Internal Revenue Service.

Under the conference substitute, a single standard for enrollment is achieved by directing the Secretary of Labor and the Secretary of Treasury to establish a joint board which will set standards for enrollment and enroll actuaries to practice before the Department of Labor and Internal Revenue Service. In order that enrollment might begin as soon as possible, it is provided than an interim joint board is to be established no later than the last day of the first month following the date of enactment.

The joint board also is to administer the standards for disenrollment of actuaries and is to write the regulations on enrollment (to be approved by the two Secretaries or their delegates). As under the House bill, an actuary can be disenrolled only after notice and hearing, and if there is a finding that he does not comply with the governing rules or regulations, or is shown not to be competent in actuarial matters.

Reports.—Both the House bill and the Senate amendment provide that actuarial reports are to be made separately to the Department of Labor and the Internal Revenue Service. The conference substitute largely follows the provisions of the House bill in the technical aspects. In keeping with the general principle of eliminating, to the maximum extent feasible, duplication of effort in reporting, the con-

ference substitute also requires the Secretaries of Labor and Treasury to take such steps as may be necessary to assure coordination, to the maximum extent feasible, between the actuarial reports they file with the Secretary of Labor and the Internal Revenue Service.

XIII. Plan Termination Insurance (Secs. 4001–4082 of the Bill)

Administering corporation and its organization

Both the House bill and the Senate amendment call for a public corporation named the Pension Benefit Guaranty Corporation to administer the plan termination provisions within (or with) the Department of Labor. The Secretary of Labor would be the chairman of a three-man board of directors. Under the House bill, the other two directors would be other officers or employees of the Department of Labor, while under the Senate amendment, the Secretaries of Commerce and of the Treasury would be the other directors.

The conferees decided, following the Senate amendment, to place the corporation within the Department of Labor under a board consisting of the Secretaries of Labor, Commerce, and the Treasury, with the Secretary of Labor to be chairman of the board. The corporation is to be "within" the Department of Labor in that it is to be quartered there and it is to receive such housekeeping services as it may request from the Labor Department. The board of directors is to establish policy, while the chairman is to be responsible for the overall supervision of the corporation's personnel, organization, and budget practices. The corporation's personnel will be appropriately classified in the usual categories, and they are to be nonpolitical. The conferees contemplate that the corporation may make contractual arrangements for the performance of some of its functions by other agencies, and, in particular, it is anticipated that it may arrange for such functions as recordkeeping to be performed by the Department of Labor insofar as those activities are analogous to the regular duties of the Labor Department. Generally, the other functions of the corporation are to be performed by its own employees, as well as by private parties contracting to perform special duties.

During the temporary start-up period following the date of enactment, the corporation may, in its discretion, make arrangements for performance of any of its functions by other agencies, and, in particular, the Department of Labor.

The conferees also established a seven-man Advisory Committee to advise the corporation on such issues as the investment of funds, appointment of trustees for terminating plans, whether plans should be liquidated immediately through purchase of annuities or continued in operation under a trustee, and on other problems with regard to which the corporation requests advice. The seven members are to be appointed by the President upon the recommendation of the board of directors. Employee organizations and employers are each to have two representatives on the Advisory Committee, with the general public to have three. The President is to designate one of the appointees as chairman.

The Advisory Committee members are to serve staggered, three-year terms, and are to meet at least six times a year. The members may

select employees for the Advisory Committee, but its employees, as well as those of the corporation, are to be appointed in accordance with Civil Service regulations.

Portability assistance

The Pension Benefit Guaranty Corporation is to provide advice and assistance, upon request, to individuals regarding establishing individual retirement accounts or other forms of deductible individual retirement savings, and also regarding the desirability, in particular cases, of transferring an employee's interest in a qualified plan to a form of individual retirement savings upon that employee's separation from service.

Investments, borrowing authority, and tax exemption

Both the House and the Senate versions authorize the corporation to borrow up to $100 million from the Federal Treasury. The conferees expect the program, ultimately, to be self-financing.

The Senate amendment exempts the corporation from Federal taxation (except for social security and unemployment taxes) and from State and local taxation (except that the corporation's real and tangible personal property, other than cash and securities, may be taxed to the same extent according to value as other such property is taxed).

The conferees accepted both the borrowing authority and the tax exemption.

The assets in the corporation's funds representing collections of premiums may be invested in obligations issued or guaranteed by the United States. The assets representing terminated plans in the process of liquidation are to be invested by the trustees of the liquidating plans consistently with investment policies suggested to the corporation by the Advisory Committee.

Premiums

In the establishment of premium rates for plan termination insurance the House bases its rate on a combination of a plan's unfunded insured benefits and its total (whether or not funded) insured benefits. The Senate amendment, on the other hand, initially provides a premium of $1 per year per plan participant. In addition, the Senate amendment provides for collection of the premiums as a tax (therefore by the Internal Revenue Service), while the House bill does not make use of the tax collection procedure but instead the corporation is to bill and collect the premiums from the plans charging interest on unpaid premiums past due.

The conferees decided to require the corporation to establish separate uniform premium rates for single-employer and for multiemployer plans for retirement benefits. Single-employer plans are to pay $1 per plan participant during the first full plan year following enactment (and a prorated amount for any part of a plan year preceding that first full plan year). Multiemployer plans are to pay 50 cents per plan participant during these periods.

For the first fractional part of a year (after enactment) and the first full plan year after the date of enactment, premiums are to be paid within 30 days after the beginning of the period of coverage. The corporation may follow this or another system thereafter.

In the case of participants in multiemployer plans, no participant is to be counted more than once in computing the per capita ($1 or 50 cents per person) premium. Thus, if, during the course of a plan year, an employee leaves one employer in the multiemployer plan to work for another employer in the plan, the plan need nevertheless pay only one 50-cents premium on account of his participation.

The corporation is directed to establish by regulation appropriate procedures for determining the amount of the premium where there are practical problems such as rapid turnover of participants during a plan year.

During the second full plan year, both single-employer and multiemployer plans may elect to pay a premium determined under the formula of the House bill but not less than one-half of what they would have to pay under the per capita rates. (This rate base for multiemployer plans continues until 1978.) One-half of the premium referred to above is to be determined according to the plan's unfunded insured benefits (but with the premium not to exceed 0.1 percent of unfunded vested benefits for single-employer plans and .025 percent for multiemployer plans). The other half of the premium is to be based on the total insured benefits. In this case the premium is to be fixed at a uniform rate (determined separately for single-employer and multiemployer plans) which is calculated by the corporation to produce the same total yearly revenue as is produced by the premiums on unfunded insured benefits.

In subsequent years the corporation may set premiums using the per capita rate base, the unfunded insured benefits rate base, or the total insured benefits rate base, or any combination of these (subject to the rate limitations above described). If the corporation should want to combine any two or more of these three rate bases, it is to design the bases to produce approximately equal amounts of aggregate premium revenue yearly from each.

The corporation may exceed the rate limitations, produce unequal amounts of aggregate premium income from the different rate bases, or use other rate bases, but only as to plan years beginning after Congress approves these revisions through a special procedure set forth in the conference substitute.

The conferees also decided that the corporation should establish by regulations equitable methods of valuing a plan's assets and benefits for the purpose of setting premium rates.

The basic enforcement mechanism is to be a civil action brought by the corporation for the collection of unpaid premiums past due. There is to be a civil penalty of up to 100 percent of the amount of unpaid premiums to be assessed after 60 days following the due date of the premiums, but application of this penalty may be postponed in cases in which payment of the premiums entails hardship to the plan. The plan is to be liable for both the premiums for coverage of benefits and for any penalty assessed for failure to pay premiums. Besides the penalty, the corporation may also charge interest (at the rate imposed at the time under section 6601(a) of the Internal Revenue Code, or its successor, upon tax underpayments) for unpaid premiums that are past due. Additionally, a court, in any action brought to enforce the insurance provisions, including an action to collect unpaid premiums, may award the corporation all or any part of its costs of litigation.

The corporation may elect to insure nonbasic benefits in covered plans and do this through separate funds. If it does so, uniform premium rates are to be established by the corporation for the risk insured in each category. The term "nonbasic benefits" may include both what are sometimes called ancillary benefits and what are sometimes called supplemental benefits.

As to basic retirement benefits, coverage is to continue although premiums are not paid when due.

As explained subsequently, the corporation is also to provide insurance protection for employer liability upon the termination of plans. In this case the corporation is free to determine the rates in a manner it determines as appropriate. These premiums are to be set at rates sufficient to fund the contingent liability covered. This coverage is not to remain in effect if premiums due are unpaid. For coverage of employer liability, the corporation is to provide regulations to set the appropriate period for which the premiums (which are to be paid by the employer) should be paid. Employers electing this coverage may give notice of their election prior to the coverage period, and the five-year waiting period during which the premiums must be paid before contingent employer liability is covered is to begin with that notification.

Establishment of pension benefit guaranty funds

Under the House bill, separate trust funds were to be established for single-employer plans and for multiemployer plans. In addition, the corporation would be given the option to establish other trust funds, including a fund for employers paying the optional extra premium for coverage against employer liability. The corporation was to have the discretion to grant coverage against this contingent employer liability for employers in single-employer plans. (There was to be no employer liability for employers in multiemployer plans.) Although premium rates were to be established separately to reflect experience and corporation costs for single-employer plans and multiemployer plans, only one trust fund was specifically provided under the Senate amendment. However, authority was granted to establish funds for insurance of contingent employer liability and insurance of other classes of benefits.

Under the conference substitute, four separate revolving funds are specifically established. They are for the basic retirement benefits of single-employer and multiemployer plans and for such nonbasic benefits of single employer and multiemployer plans that the corporation chooses to insure. It is intended that separate accounts will be maintained in the two basic retirement funds for employer liability payments and for premiums paid for employer liability coverage.

The resources of each fund are not to be used to pay the losses or expenses of another fund, and the funds may draw upon the general funds of the Treasury only to the extent of their borrowing authority. The funds are to be self-sufficient and are not to be a charge on the Federal budget.

Among the receipts to be included in each fund are the appropriate portions of premiums, penalties, interest, and other charges; employer liability payments; amounts borrowed from the Treasury; and interest earned by fund assets.

Disbursements are to be made from each fund for payments of insured benefits (including employer contingent liability coverage), repayment to the Treasury of borrowed amounts, operational and administrative expenses, and payments for assets being purchased under certain circumstances from a plan being terminated.

Plans covered

The House bill required mandatory coverage of all plans to which the funding standards of the bill would apply, except that no plan having less than 25 participants (of whom at least 10 must have vested benefits) during any five consecutive years, or any plan with assets covering less than 10 percent of the value of the plan's insured benefits, would be covered. The Senate amendment required mandatory coverage of all qualified plans except money purchase pension plans, profit-sharing plans, stock bonus plans, governmental plans, church plans (other than those electing to be covered), and certain fraternal association plans.

Subject to specific exceptions, the conference substitute requires mandatory coverage of employee pension benefit plans that either affect interstate commerce (and, in the case of nonqualified plans, have for five years met the standards for qualified plans) or that are qualified under the Internal Revenue Code, the so-called 403(b) plans of certain educational and other tax-exempt organizations, and some so-called H.R. 10 plans for the self-employed and their employees. Covered plans must pay the appropriate premium for coverage. As to whether any particular benefit receives insurance coverage, see "Benefits guaranteed," below.

A plan once determined to be a qualified plan by the Internal Revenue Service is a covered plan even if the determination is subsequently deemed erroneous. However, once a qualified plan loses its qualification, benefits thereafter accruing are not insured.

Plans specifically excluded from coverage are:

(1) individual account plans (such as money-purchase pension plans, profit-sharing plans, thrift and savings plans, and stock bonus plans),

(2) governmental plans (including plans set up under the Railroad Retirement Act of 1935 or 1937),

(3) a church plan which has not volunteered for coverage, is not for employees in an unrelated trade or business, and is not a multiemployer plan in which one or more of the employers are not churches or a convention or association of churches,

(4) plans established by fraternal societies or other organizations described in section 501(c)(8), (9), or (18) of the Internal Revenue Code which receive no employer contributions and which cover only members (not employees),

(5) a plan that has not after the date of enactment provided for employer contributions,

(6) nonqualified deferred compensation plans established for a select group of management or highly compensated employees,

(7) a plan outside the United States for nonresident aliens,

(8) a plan primarily for a limited group of highly paid

employees, where the benefits to be paid (or contributions received) are in excess of the limitations set forth in section 415 of the Internal Revenue Code (as added by the conference substitute),

(9) a qualified plan established exclusively for "substantial owners" (defined below),

(10) a plan of an international organization exempt from tax under the International Organizations Immunities Act.

(11) a plan maintained only to comply with workmen's compensation, unemployment compensation, or disability insurance laws,

(12) a plan established and maintained by a labor organization described in section 501(c)(5) of the Internal Revenue Code that does not after the date of enactment provide for employer contributions,

(13) a plan which is a defined benefit plan to the extent it is treated as an individual account plan under section 3(35)(B) of the Act, or

(14) a plan established and maintained by one or more professional service employers that has from the date of enactment not had more than 25 active participants. Once one of these plans has more than 25 active participants, it remains covered although the number of such employees drops to 25 or less.)

Benefits guaranteed

The House bill would provide coverage for benefits required to be vested under the bill's minimum vesting standards (up to the insurance limitations) if the plan providing the benefit had been covered for more than five years prior to the termination. The corporation could elect to cover (subject to certain conditions) nonbasic benefits if both the plans providing them and the plan provisions providing the particular benefits had been in existence for more than five years prior to the termination, or if the plans providing the coverage were tax-qualified. The Senate amendment provided coverage for benefits vested under the plan up to the insurance limitations and without regard to whether they exceeded the vesting required under the bill. The benefits, however, had to have been provided by plan provisions in effect at least three years prior to the termination.

Under the conference substitute, vested retirement benefits guaranteed by the plan (other than benefits vesting only because of the termination) are to be covered to the extent of the insurance limitations except to the extent indicated below. (Nonbasic benefits the corporation had chosen to guarantee are also to be covered. These nonbasic benefits may include that part of annuities in excess of $750 monthly, medical benefits, etc. This coverage is not necessarily to be subject to the phase-in rule limiting coverage of basic retirement benefits.)

One of the principal limitations on the coverage is that it is to be phased in at the rate of 20 percent per year until the plan or benefit is fully covered after it has been in effect for five years. (For this purpose, the period of existence of a successor plan covering substantially the same employees and providing substantially the same benefits is to be added to the period of existence of its predecessor plan in determining how long a benefit has been in effect.)

In determining how long a plan or amendment has been in effect for purposes of the phase-in schedule, the first year following the end of the plan year in which the plan or amendment first becomes effective constitutes the first year (after which 20 percent of the benefit is covered).

The phase-in rule applies to all benefits provided by qualified plans from the date the benefit was provided. In the case of nonqualified plans that affect commerce, the phase-in rule applies only to benefit increases since the original plan benefits must have been in existence for five years when the plan is first covered (after at least five years of meeting all the standards applicable to qualified plans).

In the case of a plan not covered the day after enactment, the five-year phase-in rule is to commence only when the plan is covered.

The benefit coverage of "substantial owners" is not to be phased in. Resultingly, the benefits of substantial owners may be covered only after their plans have been in effect for 5 years, but at that time their benefits may be covered entirely (up to the basic insurance limitation).

In the case of a termination after the date of enactment (after December 31, 1977, in the case of a termination of a multiemployer plan), the phase-in rule is not to apply unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under the bill. For example, if guaranteed benefits had been increased by one or more amendments made during the 5 years before the termination (or if the plan was created during those 5 years), and the employer's financial condition at the time of termination had not deteriorated significantly from his employer's financial condition immediately after the amendment, then no part of the benefit increase attributable to the amendment is to be insured.

If such a termination was for any purpose other than a reasonable business purpose (whether or not the primary purpose) of obtaining insurance benefits, benefits established or increased during the five years prior to termination are to receive no coverage. For the purpose of this provision, a termination to avoid the liability or responsibility imposed under Title IV on an employer is to be considered a termination for a purpose other than a reasonable business purpose.

Guarantee of benefits is not to extend to benefits accrued after the Secretary of the Treasury or his delegate issues a notice of determination that any trust in the plan is no longer tax-qualified (unless the determination is later held erroneous) or after a plan amendment is adopted that causes the Secretary or his delegate to issue a notice of determination that any trust in the plan is not tax-qualified (unless the determination is later held erroneous or unless the amendment is retroactively revoked to comply with the amendment).

Insurance limitations

The House bill limited insurance benefits to the actuarial equivalent of an annuity, beginning at age 65, of $20 per month per year of credited service, regardless of the number of plans in which the employee had been a participant. This maximum amount would be adjusted according to changes in all employees' average wages. No insurance at all would be paid to a "substantial owner," which is defined as

a person who owns a sole proprietorship, more than five percent of a partnership, or five percent of either the entire stock or the voting stock of a corporation.

The Senate amendment would have restricted insurance benefits to the actuarial equivalent of the lesser of 50 percent of average wages during the five years preceding termination or $750 monthly. This maximum was to be adjusted in accordance with changes in the social security contribution and benefit base. The insurance maximum was thus set without regard to the number of plans in which the employee had been a participant, and the insured benefits of an "owner-employee" in the plan during the year of termination or any of the preceding three years were to be reduced by his pro rata share of the accumulated funding deficiency requiring the insurance payments.

In general, the conferees followed the outline of the Senate amendment. However, the limitation is set as the actuarial equivalent of the lesser of 100 percent of the employee's wages during his highest-paid five consecutive years (without regard to temporary absences from participation during that period), or $750 monthly. This amount is adjusted to reflect changes in the social security contribution and benefit base.

In computing the limitation, the guarantee of nonbasic benefits is to be disregarded. In other words, employees are entitled to receive insurance payments for nonbasic benefits although those insured benefits, together with the payment of guaranteed retirement benefits, exceeds the maximum limitation.

The maximum benefit for an "owner-employee" as to each benefit or benefit increase is also limited by a fraction representing the number of years in the 30 years (the period for amortizing an unfunded past service liability for single-employer plans created after January 1, 1974) preceding termination in which the owner-employee was an active plan participant. An owner-employee is defined as a person owning 10 percent of an enterprise, whether a corporation or a partnership, or a sole proprietorship, at any time in the five years preceding the termination.

Employer's contingent liability coverage

The House bill authorized the corporation to insure employers against the contingent liability that could arise against employers to reimburse the corporation for its losses caused by coverage of those employers' terminated plans. The amount of premiums charged for this coverage was to be based upon the actual and projected costs of this coverage. (Since there was to be no employer contingent liability for employers in multiemployer plans, there was no provision for coverage of such employers.)

The Senate amendment mandated the corporation to offer contingent liability coverage that was to be applicable to all electing plans (including both single-employer and multiemployer plans) if the extra premium for the coverage had been paid for each of the five plan years immediately preceding the plan year of the termination. The coverage was not to be granted, however, if the employer remained in the same or in a similar business. The premiums were to be calculated by the corporation at a rate sufficient to fund any contingent liability coverage payments.

Under the conference substitute, coverage of contingent employer liability is mandatory for single and multiemployer plans, but the corporation is instructed to attempt with private insurers to devise within a 36-month period a system under which risks are equitably distributed by the corporation and the private insurers with respect to classes of employers insured by each. The corporation may thereafter require all employers to obtain coverage from the private insurers, the corporation, or both, depending upon the system devised. The corporation is to fix the premiums at a rate sufficient to fund any payment by the corporation required by the coverage. Private insurers are left free to fix the rates of their own premiums, and other terms and conditions of insurance, but the corporation may level any charge upon employers obtaining private insurance that may be necessary to assure that the costs to all employers are reasonable and equitable and to assure the liquidity and adequacy of the corporation's funds used for this purpose. The corporation may not make any coverage payment with respect to contingent liability until the insurance has been in effect, and the premiums have been paid, for more than five years.

The corporation may set the premium levels and collect the premiums (in arrears) for this coverage during any time up to, but not later than, three years after the date of enactment. An employer may then pay premiums for the period since the date of enactment, and this period is to be counted toward completion of the five-year payment of premiums requirement. Once obtained, coverage is to be prospective only, not retroactive.

In making arrangements with private insurers, the corporation is also to consider using private industry guarantees, indemnities, or letters of credit as an alternative or supplement to private insurance.

Termination by plan administrator

The House bill requires an employer or employee organization planning to terminate a plan to first notify the corporation. The Senate amendment requires a 90-day notification period that may be extended by agreement. A notification by the corporation during one of these periods that the plan assets are insufficient is to cause a termination by the corporation under the provisions for a termination by the corporation. If, in the course of an authorized voluntary termination, a plan administrator determines that the plan assets are insufficient, he is required to so notify the corporation, which is then to terminate the plan under the regular proceedings for a termination by the corporation.

The Senate amendment also provides that a change from an insured plan into a money purchase plan, a profit-sharing plan, or a stock bonus plan (none of which may be covered) is to be treated as a voluntary termination (for which authorization from the corporation must first be obtained).

Under the conference substitute, the plan administrator must file notice with the corporation at least 10 days before the date of the proposed termination, and he may pay no benefit under termination procedures of the plan for 90 days after the proposed termination date, unless, in the interim, he receives a notice of determination from the corporation that the plan assets are sufficient to discharge the plan obli-

gations as they fall due. The plan administrator or the corporation is authorized to petition the court for appointment of a trustee to manage the plan under the same procedure by which a trustee may be appointed in the case of an involuntary termination, if the best interest of the participants and beneficiaries would be served by the appointment. In other respects the conferees accepted the substance of the Senate amendment.

A plan termination in the sense that benefits stop accruing (as provided in section 411(d)(3) of the Internal Revenue Code) is not to be termination under the insurance provisions so long as the employer continues to meet the funding standards provided by the substitute.

Date of termination

The termination date of a plan is to be determined by the plan administrator or the corporation, depending upon which terminates the plan and also depending upon whether this date is agreed to by the other party. If there is not agreement between the corporation and the plan administrator, the termination date is to be established by the court. However, in the case of terminations of plans which occur before the date of enactment, the date of termination is to be set by the corporation on the basis of the date on which benefits ceased to accrue or on any other appropriate basis.

Termination by Pension Benefit Guaranty Corporation

Under the House bill, the Secretary of Labor may terminate a plan, after a hearing, (a) if he determines that the plan failed to meet the minimum funding standards, the plan is unable to pay benefits when due, or failure to terminate will cause long-run loss to the corporation, or (b) if the employer or an appropriate employee organization applies to him for authority to terminate. In terminating a plan, the Secretary of Labor must distribute the plan's assets in accordance with the priority schedule contained in the bill. He is permitted to distribute the assets without ending the plan or without appointing a receiver, and also he may order the plan's continuation under a receiver until all benefit liabilities are satisfied. At any time, however, he may wind up the plan (after a hearing) with a distribution of remaining assets.

Under the Senate amendment, the corporation may institute termination proceedings for the causes listed in the House bill or if a distribution in excess of $10,000 is made to an owner-employee (other than on account of death or disability) if, after the distribution, there are unfunded vested liabilities.

Under the conference substitute, the corporation may institute termination proceedings in court if it finds that:

(1) minimum funding standards have not been met,

(2) the plan is unable to pay benefits when due,

(3) a distribution is made to an owner-employee of $10,000 in any 24-month period if not paid by reason of death and if, after the distribution, there are unfunded vested liabilities, or

(4) the possible long-run liability to the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

In seeking a termination, the corporation is to apply to the appropriate United States District Court, with notice to the plan, for

appointment of a trustee to administer the plan pending issuance of a termination decree. Unless cause is shown within three days thereafter why a trustee should not be appointed, the appointment is to be made and the trustee is to administer the plan until the corporation decides whether the plan should be terminated. The court may appoint the trustee from a list furnished to the court by the corporation, or it may appoint the existing plan administrator or the corporation itself. Even without the appointment of a trustee, however, the corporation may, with notice to the plan, apply for a termination decree.

If it grants the decree, the court is to order the trustee (after first appointing a trustee, if none has yet been appointed) to terminate the plan.

A trustee with the discretion to commence the final liquidation of the trust must first give the corporation at least 10 days' notice. If the corporation should oppose the trustee's proposal, the court is to resolve the dispute.

In the case of small plans, the corporation may prescribe a simplified procedure and may pool assets of small plans so long as the rights of the participants and employers (including the right to a court decree of termination) are preserved. Furthermore, the corporation may agree with any plan administrator to designate a trustee who, without court appointment, is to have the usual powers of trustees appointed by the court.

If the application for a trustee is rejected by the court, the trustee is to transfer all assets and records of the plan back to the plan administrator within three days. If the corporation fails to apply within 30 days after appointment of the trustee for a termination decree, the trustee is to transfer the assets and records back to the plan administrator. This 30-day period may be extended by agreement or court order.

The corporation may file for termination despite the pendency in any court of bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan. The court may also stay any of these proceedings. In the termination proceedings, the court is to have the exclusive jurisdiction of the plan and its assets with powers of a court in bankruptcy and of a court in a Chapter X proceeding.

The compensation of the trustee is to be approved by the corporation, and, in the case of a trustee appointed by the court, with the consent of the court. Trustees are authorized to employ professional assistance in accordance with regulations to be issued by the corporation.

Reportable events

Under the House bill, certain events indicating possible danger of plan termination must be reported by the plan administrator to the corporation. These events are:

(a) a tax disqualification;

(b) a benefit decrease by plan amendment;

(c) a decrease in active participants to 80 percent of the number at the beginning of the plan year, or 75 percent of the number at the beginning of the previous plan year;

(d) an IRS determination that there has been a plan termination or partial termination for tax purposes;

(e) a failure to meet the minimum funding standards;

(f) inability to pay benefits when due;

(g) a distribution of $10,000 or more in a 24-month period to a "substantial owner," if the plan has unfunded nonforfeitable benefits after the distribution (unless the distribution was made on account of death);

(h) filing of a report preliminary to a merger, consolidation, transfer of assets or liabilities, or a distribution in excess of $25,000 to a participant in any plan year, or the granting by the Secretary of Labor of a hearing in regard to a variation on the bill's standards; or

(i) the occurrence of any other event which the corporation determines may be indicative of a need to terminate the plan.

The Senate amendment is essentially the same as the House bill points through (f). As to point (g), the Senate amendment requires reporting of any distribution of $10,000 or more to an owner-employee (unless the distribution is made on account of death or disability), if the distribution increases or creates unfunded vested liabilities. The Senate amendment does not include provisions corresponding to points (h) and (i) of the House bill.

The Senate amendment provisions requiring the Secretary of Treasury to report certain occurrences to the corporation are essentially the same as those of the House bill. There are no corresponding provisions regarding the Secretary of Labor.

The conference substitute requires the plan administrator to inform the corporation with respect to the same listing of reportable events as listed in the House bill. However, the corporation is authorized to waive the requirement and to require any of the events referred to above to be included in the annual report made by the plan. In addition, any employer in a covered plan who knows, or has reason to know, that a reportable event has occurred is immediately to notify the plan administrator of this event.

Management functions

Under the House bill, the Secretary of Labor is given authority to transfer funds of terminated plans to the corporation for investment and for payment of benefits, as well as to obtain outside financial counsel and to take any other consistent action to assure equitable payments to participants and beneficiaries. The Senate amendment provides that investments of funds of terminated plans are to be handled by the court-appointed trustees.

Under the conference substitute, the trustee is to take over general management of the assets. The Advisory Committee is to make timely recommendations to the corporation regarding investment policy relating to funds of terminated plans and on whether terminating plans, at the time, should be operated as liquidating trusts or liquidated (with the proceeds used to purchase annuities for the participants and beneficiaries). The corporation is to make recommendations to trustees of terminated plans regarding investments and is to direct each trustee whether to operate his plan as a wasting trust or to liquidate it and purchase annuities. If the trustee disagrees with the directive of the corporation, he is authorized to apply to the court for a resolution of the dispute.

Allocation of assets at termination

Under the House bill, priorities are provided for distribution of assets upon termination of a plan. In general, net assets (assets less expenses and less those assets irrevocably allocated to individual accounts at least 2 years before termination) are allocated in the following order:

(a) employee contributions,

(b) vested benefits of employees already receiving benefits or entitled to choose early retirement (except for disability),

(c) other vested benefits,

(d) other accrued benefits,

(e) interest on employee contributions,

(f) remaining liabilities proposed in the plan for payment upon termination, and

(g) pro rata to each person entitled to receive a distribution on account of priorities (a) through (f).

The Senate amendment requires that plan assets be distributed according to the following priorities:

(a) voluntary employee contributions,

(b) mandatory employee contributions,

(c) benefits in pay status at least 3 years (at the benefit level existing 3 years before termination),

(d) other insured benefits.

Both the House bill and the Senate amendment also have other provisions regarding allocation within a priority category when the remaining assets are insufficient to satisfy all the benefits in that category, regarding benefits in more than one priority category, and regarding similar related problems.

Under the conference substitute, assets are to be allocated among plan benefits in the levels of priorities stated below:

(1) Voluntary employee contributions,

(2) Mandatory employee contributions,

(3) Equally among individuals in the following two subcategories:

(i) in the case of benefits in pay status three years prior to termination (at the lowest pay level in that period and at the lowest benefit level under the plan during the five years prior to termination) and

(ii) in the case of benefits which would have been in pay status three years prior to termination had the participant been retired (and had his benefits commenced then, at the lowest benefit level under the plan during the five years prior to termination).

(4) All other guaranteed benefits up to the insurance limitations (but irrespective of the limitation to one $750 monthly benefit regardless of the number of plans in which the employee participated) and (on an equal level of priority) benefits that would be so guaranteed except for the special limitation on coverage of a "substantial owner,"

(5) All other (meaning uninsured) vested benefits, and

(6) All other benefits under the plan.

The plan may, under regulations, establish subclasses and categories within these six classes.

Employer liability

Both the House bill and the Senate amendment required employer liability for insurance payments made by the corporation because of

terminations of the employers' plans. The House bill set a limit on employer liability of 50 percent of the employer's net worth, as compared with 30 percent under the Senate amendment. In addition, the House bill did not impose any liability in the case of multiemployer plans.

As previously discussed, both the House bill and the Senate amendment authorized the corporation to insure employers against employer liability, under different sets of conditions.

Under the conference substitute, employer liability is required for employers in both single-employer and multiemployer plans. The employer liability is limited to 30 percent of net worth, with net worth valued as of a date chosen by the corporation, but not more than 120 days prior to the termination.

Net worth is to be computed without taking the contingent employer liability into the calculation. It is determined on the basis chosen by the corporation to reflect best the operating value of the employer, and it is to be increased by any transfers made by the employer prior to the termination that the corporation finds improper.

In determining the employer who may be liable for insurance coverage losses of the corporation, all trades or businesses (whether or not incorporated) under common control are to be treated as a single employer. Trades or businesses under common control may, for this purpose, include partnerships and proprietorships as well as corporations.

If, as a result of the cessation of operations at any facility, more than 20 percent of the participants in a plan are separated from their employment, the employer is to be treated as an employer in a terminating plan that is maintained by more than one employer. Furthermore, in the case of withdrawals of employers in multiemployer plans resulting in substantial reductions of contributions, the corporation may treat the withdrawal as constituting a termination with respect to employees of such employers.

In determining the amount of the corporation's liability, the amount of employer liability (but not the employer's net worth), the application of the lien arising out of employer liability, the appropriate allocation of assets in the event of a termination, the value of the plan's assets, the amount of benefits payable with respect to each participant, the amount of benefits guaranteed with respect to each participant, the present value of the aggregate amount of benefits potentially payable by the corporation, and the fair market value of the plan's assets, the date of determination is to be the date of termination.

In determining the fair market value of a plan's assets, unrealized gain is to be taken into account.

Lien for employer liability

The House bill provides for the imposition of a lien upon all property and rights in property belonging to an employer who is liable to the corporation as a result of a plan termination. Under this provision, the lien would arise if payment were not made after demand for payment was made by the corporation and would be in the amount of the liability including interest. Further, the lien would not be valid against the general Federal tax lien.

The Senate amendment provided that the lien would also be inferior to the special estate and gift tax lien imposed under the Internal Revenue Code and, if arising from an obligation incurred by the employer prior to termination of the plan, a lien or other security interest which is perfected not later than 30 days after termination. The amendment further modifies the House bill by authorizing the corporation to subordinate the lien under certain circumstances.

The conference substitute in general follows the lien imposition provisions of both bills but provides (1) additional rules relating to the period during which the lien will be in existence; (2) that the priority of the lien is to be determined in the same manner as under the Federal tax lien rules to minimize circular priority problems; (3) rules relating to the civil action to foreclose the lien, including the period during which an action must be commenced; and (4) authority for the corporation to release or subordinate the lien under certain circumstances.

More specifically, the revised and added provisions may be explained as follows:

(1) The conference substitute adopts the lien priority rules of the Internal Revenue Code. Generally, these rules provide protection against the lien for a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor if any such person's title or interest is acquired or perfected before notice of the lien is filed. Protection is also provided for certain other interests even if acquired or perfected after notice of the lien is filed. Generally, if the purchaser or creditor does not have actual notice or knowledge of the lien, this status is provided for a purchaser or a holder of a security interest in a security (stocks, bonds, negotiable instruments, etc.), a purchaser of a motor vehicle, a purchaser of certain household goods or personal effects in a casual sale for less than $250, an insurer which makes a loan secured by a policy issued by it, and a financial institution which makes a passbook loan secured by an account with the institution. This status is also provided for certain retail purchases, possessory liens, real property tax assessments, liens for repairs to a residence, and attorney's liens.

Protection against the lien is also provided with respect to certain advances which are made, after notice of the lien is filed, pursuant to a commercial transaction financing agreement, a real property construction or improvement financing agreement, or an obligatory disbursement agreement.

In the case of bankruptcy or insolvency proceedings, the lien is to be treated in the same manner as a tax due and owing to the United States.

The conference substitute provides that, for purposes of determining the priority between a Federal tax lien and the employer liability lien, each lien is to be treated as a judgment lien arising when notice of that lien is filed. The effect of this is to adopt a "first to file" priority rule with respect to the employer liability lien and the Federal tax lien imposed under section 6321 of the Internal Revenue Code.

(2) The conference substitute provides that the corporation may bring a civil action in a district court of the United States to enforce the employer liability lien or to subject any property belonging to an

employer to the payment of the employer's liability to the corporation. Generally, this action must be commenced within 6 years after the date upon which the plan is terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the employer before the expiration of the 6-year period.

(3) The conference substitute provides for both the release and subordination of the lien. The lien may be released or subordinated if the corporation determines, with the consent of the board of directors, that release or subordination of the lien would not adversely affect the collection of liability to the corporation. Under these conditions, the corporation may issue a certificate of release or subordination of the lien with respect to the employer's property or any part thereof.

Recapture of plan payments

The House bill contains no provision for the recovery shortly prior to termination of payments to participants that might be deemed excessive. Under the Senate amendment, certain payments of a terminated plan affecting interstate commerce made during a three-year period prior to termination may be recovered. Payments made on account of death or disability were not to be subject to recovery, and the corporation was authorized to waive recovery of certain amounts when the recovery would have caused substantial hardship.

In the case of a distribution to an owner-employee that exceeds $10,000 and creates or increases unfunded vested liabilities, the three-year lookback period would not begin until the corporation is informed of the distribution (which is a reportable event under both the Senate amendment and the conference substitute).

Under the conference substitute, the trustee may recover all payments to a participant in excess of $10,000 (or the amount he would have received as a monthly benefit under a lifetime annuity commencing at age 65, if greater) made during any twelve-month period within the three years prior to termination.

As under the Senate amendment, the conference substitute provides that there is to be no recovery of payments for after death or death or disability, that the three-year period is not to end, in the case of a distribution to a substantial owner (after which the plan has unfunded vested liabilities), until the corporation is notified of the distribution, and that the corporation is authorized to waive any recovery that would cause substantial economic hardship.

Restoration of plans

Neither the House bill nor the Senate amendment had any specific provision that procedures against a plan in the termination phase might be abandoned by the corporation if the employer and plan enjoyed a favorable reversal of business trends, or if some other factor made termination no longer advisable.

Under the conference substitute, the corporation may cease any termination activities and do what it can to restore the plan to its former status. As a result, a terminated plan being operated by a trustee as a wasting trust may be restored if, during the period of its operation by the trustee, experience gains or increased funding make it sufficiently solvent. The corporation may, when appropriate, transfer

to the employer or plan administrator part or all of the remaining assets and liabilities.

Liability of substantial employer for withdrawal

Since employers in multiemployer plans were not liable for the corporation's losses under the House bill, that bill contained no provision regulating the withdrawal of a substantial employer from a multiemployer plan.

Under the Senate amendment, the plan administrator was to inform the corporation of the withdrawal of a substantial owner (as defined). The corporation could then either require payment into escrow of the substantial owner's potential liability or require deposit of a bond in the amount of 150 percent of the liability. If the plan terminated within five years, the payment or bond was to be forfeited. The corporation could, in the case of a withdrawal causing a significant reduction in plan contributions, require allocation between participants no longer in the plan because of the withdrawal and the remaining participants. The portion of the fund allocable to the departed participants would be treated as a termination. The corporation could waive all these procedures if there were an indemnity agreement between the remaining employers in the plan sufficient to satisfy all plan liabilities.

Under the conference substitute, the plan administrator is required to notify the corporation within 60 days after the withdrawal of a substantial employer from a plan under which more than one employer makes contributions.

The corporation may require the substantial owner either to pay the potential liability (as determined by the corporation) into escrow or to post a bond in 150 percent of the amount of the liability. The liability is normally to be determined as the substantial employer's share (with the substantial employer's share computed according to that employer's proportion of the total employer contributions to the plan within the past five years) of the total plan liability that would have existed if the plan had terminated when the substantial owner withdrew. However, the corporation is also authorized to determine the liability according to any other equitable basis prescribed by it in regulations.

If the plan terminates within five years, the payment or bond is forfeited for the benefit of the plan, but the employer may be refunded any amount not needed to meet the plan's liabilities. If there is no termination, the payment or bond is to be returned to the substantial employer or cancelled.

As alternatives to the bond or escrow payment requirement, the corporation may, if the withdrawal causes a significant reduction in the amount of plan contributions, require the plan fund to be allocated between those participants no longer under the plan because of the withdrawal and those participants still covered. That portion of the fund allocable to participants no longer in the plan is to be treated as a termination, while the remainder is to be a new plan.

The corporation is entitled to waive the use of either of these procedures if there is an indemnity agreement between all the other employers in the plan sufficient to satisfy all plan liabilities.

Liability of employers on termination of plan maintained by more than one employer

The House bill did not provide employer liability for employers in multiemployer plans. Under the Senate amendment, the employer liability on termination of a multiemployer plan was to be allocated among the employers who had contributed to the plan during the five years before termination, in proportion to their contributions. The 30-percent of net worth limit on employer liability was to be applied separately to each employer.

Under the conference substitute, the general rule of the Senate amendment is accepted with the three modifications:

1. This particular computation of employer liability is to apply to all plans having more than one employer making contributions at the time of the termination, or at any time within the five plan years preceding the date of termination.

2. The allocation is not to be in accordance with actual contributions made by employers during the last five plan years ending prior to the termination, but according to the amounts *required* to be contributed by each employer during that period.

3. The corporation is authorized to determine the liability of each employer on any other equitable basis prescribed in the corporation's regulations.

This regulatory authority extends in two directions. That is, the corporation is authorized to permit other equitable methods of allocation to be used by the employers in the plan, where such other method of allocation would not increase the likelihood that the entire plan would terminate. Also, the corporation is authorized to require the use of other equitable methods where allocation in proportion to contributions would produce inequitable results. For example, the corporation is authorized to require a different allocation basis if the employers in a plan have agreed on a contribution formula that would have the effect of shifting employer liability from those employers that had net assets to those employers that had little or no net assets.

In this regard, it should be noted that the affiliated employer rules are to apply in this area. That is, if one member of an affiliated group has employer liability, then that liability is to extend to the entire affiliated group. Also, the 30-percent-of-net-assets limit is to apply with respect to the net assets of the entire group.

Effective dates

The House bill applied the provisions on premiums and benefits to plan years beginning after June 1, 1974, for single employer plans. In the case of a multiemployer plan involving a collective bargaining agreement covering more than 25 percent of the total participants, these provisions applied to plan years beginning after the earlier of December 31, 1980, or the date on which the last such agreement relating to that plan terminated (without regard to extensions made after the date of enactment of the bill). Provisions other than those regarding premiums and benefits payable were to take effect on the date of enactment of the bill.

The Senate amendment required premiums to be collectible with respect to plan years beginning after December 31, 1973. The provi-

sions regarding terminations and corporation and employer liability applied to plan years beginning after December 31, 1976, unless the corporation determined it had sufficient funds to cover earlier terminations. The remaining provisions were to take effect as of the date of enactment of the bill.

Under the conference substitute, benefits payable by single-employer plans are covered with respect to plans terminated after June 30, 1974, provided the usual requirements for coverage are met. Employers do not, however, incur contingent liability coverage for plans terminating between June 30, 1974, and the date of enactment.

These plans are not covered, however, unless they send the Secretary of Labor a notice received by him not later than 10 days after enactment. If reasonable cause is shown for failure to meet this requirement, notice can be received as late as October 31, 1974.

The opportunity to give notice as late as October 31, 1974 (where good cause is shown), is not intended to apply to situations where the failure to give timely notice was the result of inconvenience or inadvertence. In determining where there is reasonable cause shown for not having given notice within the 10-day period, it is intended that the showing be by clear and convincing evidence that it was not reasonably possible to have given the notice within the time allowed.

With respect to multiemployer plans, benefits generally are not covered for plans terminating before January 1, 1978. However, the corporation may, in its discretion, cover the benefits of multiemployer plans that had been maintained for five years prior to a termination after the date of enactment, if the corporation determines that this coverage will not jeopardize the coverage of multiemployer plans terminating after December 31, 1977.

Notwithstanding the usual requirements for coverage (discussed above with respect to coverage of plans and coverage of benefits), the corporation may exercise its discretion to cover multiemployer plans which terminate after the date of enactment and before January 1, 1978, if these plans were maintained for five years prior to termination and if the plans—

(A) have been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding five years, and

(B) if the participating employers and employee organization or organizations had no reasonable recourse other than termination.

Where in exercise of its discretion to cover benefits of multiemployer plans that have been in substantial compliance with the funding requirements and had no reasonable alternative to termination, or in exercise of its discretion to cover any multiemployer plan terminating before January 1, 1978, the corporation is to notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Labor and Public Welfare and the Committee on Finance of the Senate.

If the corporation decides to exercise its discretion with respect to a multiemployer plan, the corporation—

(A) may establish requirements for the continuation of payments which commenced before January 2, 1974, with respect to retired participants under the plan,

(B) may not make payments with respect to any participant who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to that participant on that date,

(C) may not make payments which are derived, directly or indirectly, from amounts borrowed from the Treasury, and

(D) is to review from time to time these discretionary payments and reduce or terminate them to the extent necessary to allow the corporation to guarantee benefits of multiemployer plans terminating after December 31, 1977, without increasing premium rates.

The premiums for both single-employer and multiemployer plans are to be payable for fractional years beginning with the date of enactment.

If the Pension Benefit Guaranty Corporation finds that a plan (other than a multiemployer plan) has terminated after June 30, 1974, and before the date of enactment (and therefore would be eligible for coverage of benefits under the plan termination insurance provisions, but the employer would not be subject to employer liability under those provisions) then the guarantee of benefits is not to apply unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this bill or of avoiding employer liability.

Temporary authority for initial period

Under the conference substitute, the corporation may appoint a receiver during the first 270 days after enactment for a plan if (1) the corporation receives notice that a plan is to be terminated, or (2) the corporation determines the plan should be terminated. Within 20 days after the appointment, the corporation must apply to the court for a decree approving the appointment.

If the court rejects the application or the corporation fails to apply within the 20 days, the plan assets are to be transferred back to the plan administrator within three days.

As an alternative to this procedure, the corporation may request the plan administrator to apply to the district court for the appointment of a receiver until the plan can be terminated.

The receiver is to determine whether the plan assets are sufficient to discharge the plan obligations. If the receiver's determination is approved by the corporation and the court, the receiver is to terminate the plan in accordance with the insurance provisions.

The corporation is also to have special temporary powers during the first 270 days after enactment to—

(1) contract for printing without regard to the provisions of chapter 5 of title 44, United States Code,

(2) waive any notice,

(3) extend the 90-day termination notice period (during which the plan administrator who has filed a notice of termination may not terminate the plan unless he receives a notice of sufficiency of plan assets from the corporation) for an additional 90-day period without the agreement of the plan administrator or approval of the court, and

(4) waive or reduce contingent employer liability for plan terminations, the requirements respecting withdrawals of substantial owners from plans, and the requirements respecting the liability of employers on termination of plans maintained by more than one employer if this appears necessary to avoid unreasonable hardship for an employer who was unable, as a practical matter, to continue its plan.

XIV. Additional Items

Preemption of State laws (Sec. 514 of the bill)

Under the substitute, the provisions of title I are to supersede all State laws that relate to any employee benefit plan that is established by an employer engaged in or affecting interstate commerce or by an employee organization that represents employees engaged in or affecting interstate commerce. (However, following title I generally, preemption will not apply to government plans, church plans not electing under the vesting, etc., provisions, workmen's compensation plans, non-U.S. plans primarily for nonresident aliens, and so-called "excess benefit plans.")

The preemption provision will take effect on January 1, 1975, except that preemption with respect to plan termination insurance will take effect on the date of enactment of this bill. However, it will not affect any causes of action that have arisen before January 1, 1975, and it will not affect any act or omission which occurred before that date. In addition, the preemption provisions will not apply to any criminal law of general application of a State.

The preemption provisions of title I are not to exempt any person from any State law that regulates insurance, banking or securities. However, the substitute generally provides that an employee benefit plan is not to be considered as an insurance company, bank, trust company, or investment company (and is not to be considered as engaged in the business of insurance or banking) for purposes of any State law that regulates insurance companies, insurance contracts, banks, trust companies, or investment companies. This rule does not apply to a plan which is established primarily to provide death benefits; such plans, of course, may be regulated under the State insurance, etc., laws.

The substitute provides that the congressional Pension Task Force is to study this provision and report back to the labor committees of the Congress on the results of its study. It is expected that the Pension Task Force will consult closely with State insurance, etc., authorities in the course of this study.

Collectively bargained plans. (Sec. 1014 of the bill and sec. 413 of the Internal Revenue Code)

The tax provisions of the substitute provide, in the case of collectively bargained plans, that the vesting requirements are to be applied as if all employers who are parties to the plan are a single employer. Generally the substitute provides similar rules with respect to the application of the participation, discrimination, exclusive benefit, etc. requirements so that the collectively bargained plan generally will be looked to as a unit to see if these requirements are satisfied, rather than testing the requirements on an employer-by-employer basis.

In addition, the tax provisions of the substitute generally provide that, for purposes of these rules, employees of labor unions and of a collectively bargained plan are to be treated as employees of an employer which is a party to the collective bargaining agreement. However, this rule is to apply only if the union, etc. as an employer additionally meets the nondiscrimination and coverage requirements of the tax laws.

The conferees understand that the rules of the substitute are the same as the rules of present law, and it is intended that the substitute merely confirm the rules of present law.

Puerto Rican plans (sec. 1022 of the bill)

Under the conference substitute, a trust which is part of a pension, proft-sharing, or stock bonus plan which is exempt from income taxes under the laws of Puerto Rico, and which is exclusively for the benefit of participants who are Puerto Rican residents, is to be treated as a tax-exempt domestic trust for years after 1973. (Such plans would be subject to title I of the bill but would be exempt from the requirements of title II.)

A plan may elect (in a time and manner to be prescribed in regulations) to be subject to the requirements of a tax-exempt domestic trust for all purposes (including title II). In this case, a Puerto Rican trust which meets the qualification requirements of U.S. tax law may cover U.S. mainland employees of the employer, as well as his Puerto Rican employees. In the case of a trust making this election, the income source rules of subchapter N will apply to trust distributions to the extent provided in regulations. An election, once made, will be irrevocable, and will apply for plan years beginning after the date of the election.

Remedial retroactive plan amendments (Sec. 1024 of the bill and Sec. 401(b) of the Internal Revenue Code)

Under the substitute, retroactive plan amendments which correct a plan that does not meet the requirements for tax qualification are allowed to cure a new plan or to cure an amendment to an existing plan. Such retroactive changes can be made within the time for filing the employer's tax return for the year in which the plan was put into effect or in which the amendment was adopted (or such later time as is designated by the Secretary of the Treasury).

Mergers and transfers of plan assets (Sec. 1021 of the bill)

Under the bill as passed by the House, a plan must provide protection to participants in the case of a merger of the plan with another plan or the transfer of assets or liabilities from a plan. The value of benefits to the participant and the extent to which the benefits have been funded is to be protected by comparing what the participant's benefit would be if the plan had terminated immediately before the merger and what the participant's benefits would be under the merged plan had the merged plan been terminated just after the merger. The postmerger termination benefit may not be less than the premerger termination benefit. Further, a plan could not make a lump-sum distribution to a participant or beneficiary if the distribution exceeded the premerger termination benefit. Further, no merger or transfer of assets or liabilities could occur without an actuarial statement indicating compliance with the requirements being filed with the Secretary of the Treasury at least 30 days before the merger or distribution. The bill as passed by the Senate did not contain comparable provisions.

Under the conference agreement, a trust is not to constitute a qualified tax-exempt trust under the tax law, and also is not to satisfy the requirements of title I, unless it provides that in the case of any merger or consolidation of a plan, or any transfer of assets or liabilities of a plan, to any other plan each participant in the plan would receive post merger termination benefits which are equal to or greater than the premerger termination benefits. In the case of multiemployer plans these rules are to apply only to the extent that the Pension Benefit Guaranty Corporation determines that these rules are necessary for the participant's protection. These rules are to apply to mergers or transfers made after the date of enactment of the bill, but the plan provision to this effect does not have to be adopted prior to January 1, 1976.

Registration with Social Security (Sec. 1031 and 1032 of the bill and secs. 6057, 6058, 6652, and 6691 of the Internal Revenue Code)

The substitute generally follows the House bill with respect to registration with Social Security. However, the House bill includes requirements for registration under both the labor and tax provisions. Under the substitute, the registration procedure is included only in the tax provisions, but this procedure applies to all plans to which the vesting standards of the labor provisions apply. In addition, under the substitute the labor provisions as well as the tax provisions require the plan administrator to furnish each person an individual statement giving him the information reported to the government; this is included so the individual may enforce his rights to receive this statement by civil action in the courts.

Under the substitute, each plan which is covered by the vesting requirements of the labor provisions is to file with the Internal Revenue Service an annual statement regarding individuals who have terminated employment in the year in question and who have a right to

a deferred vested benefit in the plan. Also, the plan administrator is to furnish each person an individual statement giving him the same information which is reported to the Government.

The Social Security Administration is to maintain records of the retirement plans in which individuals have vested benefits, and is to provide this information to participants and beneficiaries on their request and also on their application for Social Security benefits.

The provisions governing registration with Social Security are to apply to a multiemployer plan to the extent provided in regulations.

The provisions requiring registration with Social Security are to apply to plan years beginning after December 31, 1975, except that reports need not be made by Social Security for 3 years after that date.

Rules for certain negotiated plans (Sec. 2007 of the bill and Sec. 404(c) of the Internal Revenue Code)

Under the bill as passed by the House, special rules were provided for welfare and benefit plans established before 1954 as a result of an agreement between a union and the government during a period of government operation of the major part of the productive facilities of the industry in which the employer is engaged. The special provisions enable these types of plans to establish two separate trusts—one for the payment of welfare benefits and a second for the payment of retirement benefits. In order to facilitate the restructuring of a welfare and pension plan into two separate plans the bill as passed by the House provides special rules for self-employed individuals who were treated as participants under the plan. The bill as passed by the Senate did not contain provisions pertaining to this manner. The conference substitute accepts the House provision without amendment.

Tax treatment of survivor benefit plans of the uniformed services (Sec. 2008 of the bill and Sec. 122 of the Internal Revenue Code)

The Senate amendment included a provision designed to continue the same tax treatment for servicemen and former servicemen of the United States under the Survivor Benefit Plan (recently enacted in P.L. 92–425) as formerly was available for them under the Retired Serviceman's Family Protection Plan in the case of annuities for surviving spouses or certain child beneficiaries. Under the present tax law, a member or former member of the uniformed services of the United States who receives a reduced amount of retired or retainer pay because of his election to contribute to the program for survivor annuity benefits is not required to include in his gross income the amount of this reduction in his pay. However, the law governing these annuities has recently been changed by the new Survivor Benefit Plan to provide that survivor annuity benefits apply unless the retired serviceman elects not to participate. The amendment conforms the existing tax treatment to this change in the election requirements under the new Survivor Benefit Plan. Thus, where a serviceman (or former serviceman) does not elect out of the new Survivor Benefit Plan and as a result receives reduced retired pay, the amount of the reduction is not

taxed to him. Similar conforming amendments are also made to other provisions of the tax laws.

The conference substitute includes this entire provision from the Senate amendment.

CARL D. PERKINS,
FRANK THOMPSON,
JOHN H. DENT,
PHILLIP BURTON,
ALBERT H. QUIE,
JOHN N. ERLENBORN,
RONALD SARASIN,
Managers on the Part of the House as to Title I of the House Bill.

AL ULLMAN,
JAMES A. BURKE of Massachusetts,
MARTHA W. GRIFFITHS,
DAN ROSTENKOWSKI,
H. T. SCHNEEBELI,
HAROLD R. COLLIER,
JOEL BROYHILL of Virginia
Managers on the Part of the House as to Title II of the House Bill.

RUSSELL LONG,
HARRISON WILLIAMS,
JENNINGS RANDOLPH,
GAYLORD NELSON,
LLOYD BENTSEN,
J. K. JAVITS,
RICHARD SCHWEIKER,
WALLACE BENNETT,
CARL T. CURTIS,
Managers on the Part of the Senate.

[From the Congressional Record—Senate, Aug. 13, 1974]

Submission of Conference Report on the Employee Retirement and Income Security Act of 1974 (Rept. No. 93–1090)

Mr. Williams submitted a report from the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2) to provide for pension reform, which was ordered to be printed.

[The conference report filed by Mr. Williams (S. Rept. 93–1090) contained the same language as the conference report filed in the House by Mr. Perkins on August 12 (H. Rep. 93–1280), the text of which appears on pages 4277–4654.]

25-028 O - 76 - 76 (Vol. III)

[From the Congressional Record—House, Aug. 20, 1974]

Conference Report on H.R. 2, Employee Retirement Income Security Act of 1974

Mr. Dent. Mr. Speaker, I call up the conference report on the bill (H.R. 2), Employee Retirement Income Security Act of 1974, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The Speaker. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of August 12, 1974, p. 3923.)

Mr. Dent (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The Speaker. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Speaker. The gentleman from Pennsylvania is recognized.

Mr. Dent. Mr. Speaker, under an agreement, I will take 15 minutes on this side. Then, I will yield 15 minutes for the use of the distinguished chairman of the Committee on Ways and Means, Mr. Ullman.

Mr. Speaker, at this time I yield such time as he may consume to the gentleman from Kentucky (Mr. Perkins).

Mr. Perkins. Mr. Speaker, first let me compliment the distinguished members of the subcommittee headed by the gentleman from Pennsylvania (Mr. Dent) without whose single efforts over the years this legislation would not be possible. I wish to strongly commend the minority members headed by the gentleman from Illinois (Mr. Erlenborn), as well as the members of the Committee on Ways and Means headed by the gentleman from Oregon (Mr. Ullman), the gentlewoman from Michigan (Mrs. Griffiths), the minority members of the Ways and Means Committee and all the members of the Standing and Conference Committees who have made a contribution to one of the most important pieces of legislation which has ever been brought before this body.

Mr. Speaker, I have been in the Congress some 25 years, and have received literally thousands of letters which I have in my files from individuals who have worked in the coal mines and were never able to get any welfare or pension benefits from the United Mine Workers Welfare and Pension Fund.

I am talking about individuals who have worked more than 10 years, 15 years, and in many instances 20 years and 25 years. They have been denied needed benefits because of, we may say, arbitrary and

hyper-technical interpretations of collective bargaining agreements to the effect that if they were not working on such and such days back in 1946 and 1947, they were just eliminated altogether from the pension plan.

This no longer will be the case. We have basic minimum pension rights written into this bill which should have been encated many, many years ago to protect the rights of working people.

Mr. Speaker, to summarize what is being done today let me state—after years of study and investigation, hearings and debate, after endless hours of work, pension reform legislation of an historic character is almost complete.

Four committees of the Congress—the Senate Committees on Labor and Public Welfare and Finance and the House Committees on Ways and Means and Education and Labor—joined in their efforts and have contributed meaningfully of their experience and knowledge. These committees shared in a most unprecedented effort, together with the Joint Committee on Internal Revenue Taxation, to produce a bill which otherwise would have been impossible of achieving.

In one sense, the purpose of this conference report is relatively simple. It is designed to reduce sharply the number of people who pay money into private pension plans year after year expecting eventually to receive retirement income only to have their hopes dashed and end up getting nothing.

It is the aim of this conference report to make pension plans more equitable and more sound. Workers will have to be permitted to participate in a covered pension plan within a reasonable time and at a reasonable age. Participating workers will have to achieve a vested interest after limited periods of service with an employer. Minimum funding standards will go a long way toward insuring the solvency of pension plans, toward insuring that when a worker retires there will be adequate dollars available to pay his pension. The adequacy of a pension plan's assets will be insured against the risk of termination by insuring the unfunded portion of the benefits.

The conference report also substantially raises the minimum standards of fiduciary conduct required of trustees, administrators, and others dealing with retirement plans and resources. These minimum standards will be enforced through criminal and civil sanctions. In addition, more adequate public disclosure of a plan's administrative and financial affairs will henceforth be required.

Mr. Speaker, while this is a most important piece of legislation, it is not perfect.

Very likely it will not, at least in the short run, encourage a dramatic increase in the number or proportion of working Americans who are covered by private pension plans, and substantially less than half of the work force are presently covered.

Mr. Speaker, this pension reform legislation is of critical importance to the congressional district in eastern Kentucky which it is my privilege to represent. It has been a source of great regret to me over the years to encounter time after time cases of miners who have been denied benefits which they had every reason to expect from the United Mine Workers welfare and retirement plan.

I have literally hundreds upon hundreds of letters in my files—

letters seeking my assistance because of denials on account of rigid, arbitrary, and unreasonable eligibility requirements.

Recently the settlement of two class action suits against the welfare and retirement fund of the United Mine Workers confirmed what many of us had believed for quite some time. That is, that the eligibility standards of that plan being administered in an arbitrary and capricious fashion.

U.S. District Judge Gerhard Gesell had even earlier upheld charges of mismanagement brought against the miners' pension fund and had forced the trustees to step down.

I am hopeful that this legislation will take a giant step forward, not only in making welfare and pension benefits to miners administered in a fair and equitable manner and with assurances of security, but also the thousands of other workers in other fields of labor who have had similar unfortunate experiences.

As I have stated, the bill does not cover everything that we might desire but it is a beginning that should have been made long ago.

The vesting requirement, however important, may only insure a minimum level of payments. The conference report does not undertake to raise the level of benefits paid under existing plans, and they are often much too meager.

The "rule of 45," one of the alternatives among the three vesting rules, some say will encourage employers to hire only younger workers, discriminating against older workers because of higher costs implicit in this plan. We hope it will not turn out that way, but some are genuinely concerned.

This report makes no pretense of reducing the tragic impact of inflation on pension plans. The erosion of retirement benefits will continue to occur until we as a nation either conquer inflation or gain more knowledge than we have now on how its effects may be reduced for our Nation's pensioners.

No, Mr. Speaker, this bill is not perfect, and it may be that in the next Congress amendments will be necessary. On a bill so vastly complicated some consequences are almost certainly unforeseen and some problems will arise, but we will continue vigorous oversight of the act. The conferees agreed on a joint task force effort to study the impact of this legislation on pension plans and to solve a number of important problems on which we have far too little information on which to legislate at this time.

Mr. Speaker, this legislation involves something in excess of 36 million workers. The total resources of pension plans are estimated to be in excess of $150 billion. That amount is increasing in excess of $10 billion annually. No one knows exactly how many pension plans there are; and, this legislation is enormously complex. If it is going to meet the hopes that we all have for it, both the Department of Labor and the Internal Revenue Service are going to need to expand their personnel rolls quickly to include the needed lawyers, accountants, actuaries, investment advisers, and administrators.

I would hope that the labor movement, the business, banking and financial communities will assist the agencies in recruiting the first rate people that are needed to make this legislation a success. I would urge also that the utmost cooperation of the Civil Service Commis-

sion and the Office of Management and Budget are going to be needed if a team is going to be put together that will effectively carry out the intention of the Congress and solve the many problems of implementation that are bound to occur in such a complicated field.

Mr. Speaker, I would be remiss if I did not again, before closing, commend the members and the staff of the four committees and the joint committee represented on this conference. They have worked together in a spirit of determination and cooperation and have solved problems of enormous complexity involving strongly felt and differing views. They have achieved, I think, a result of which both bodies can be enormously proud.

Mr. Speaker, I would like to ask the distinguished gentleman from Pennsylvania one question:

Section 4082(c)(2) of the act provides that the Pension Benefit Guaranty Corporation will have discretion, subject to certain limitations, to provide termination insurance to a multi-employer plan which terminates after the date of enactment and before January 1, 1978. For this purpose, will the discretionary authority of the corporation extend to partial termination as well as to complete terminations of a plan?

Mr. DENT. The answer to that is "Yes." In the pension field, the term "termination" has been defined by Treasury regulations for many years to include both partial and complete terminations—Treasury Regulation section 1.401-6(b)(2). In accordance with this usage, references to termination in section 4082(c)(2) of the act would also refer to either a complete or partial termination.

Mr. PERKINS. Mr. Speaker, I wonder whether the gentleman from Pennsylvania will please answer this question: In developing regulations to determine "hours of service" as set forth in section 202(a)(3)(C), will the Secretary be able to take into account the recordkeeping problems of individual plans or industries?

Mr. DENT. The answer to that, as I think both the chairman of the Committee on Ways and Means and I agree, is that it is contemplated that in applying the standard of 1,000 hours of service as constituting a year of service the regulations will recognize various alternative methods of computing hours of service to take into account the peculiar problems of different plans or industries. For example, in some industries correct records of hours worked may be difficult to obtain, but the equivalent of "hours of service" can be arrived at from data concerning the earnings of workers.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. Biaggi).

(Mr. Biaggi asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, I would like to take this opportunity to congratulate the chairman of this subcommittee, the gentleman from Pennsylvania (Mr. Dent). I know the work that he has done in connection with this monumental legislation. Rightfully called the Dent bill, it is a bill which, when enacted into law and signed by the President, will go down as one of the milestones in congressional legislative activities.

The gentleman from Pennsylvania has labored 7 long years and he

has provided a long-overdue answer to the problems of pension rights that have existed over the years for the working man of America.

I am delighted to have served on the Pension Task Force and to have been associated with the gentleman from Pennsylvania on the development of this bill.

Mr. Speaker, I rise to offer my strong and enthusiastic support for the conference report to H.R. 2, the Pension Reform Act. This is indeed an historic day in the Congress for we are about to pass one of the most important pieces of legislation ever for the working men and women of this Nation.

The benefits of this legislation for some 70 million working men and women will be far reaching and profound. Workers are receiving their own version of an emancipation proclamation. The Pension Reform Act will save the American worker from economic anxiety and uncertainty which in the past has accompanied retirement. It will free workers from servitude to unscrupulous employers, who seek to deprive their employees of the fundamental right to a pension.

I am personally proud on this important occasion. Proud in the sense of having been a cosponsor of this legislation as well as a member of the Pension Task Force which deliberated on the language of this bill. It is a day when all of us who worked so diligently and tediously on this bill should be proud, for the final version we are considering today is an excellent piece of legislation.

H.R. 2, while extremely complex, has one underlying theme. It is a piece of legislation designed to protect and expand the rights of all workers to a pension. It sets no geographic, social or economic stipulations, but instead seeks to cover the gamut of working people under its provisions.

I would like to discuss what I consider to be the key points in this landmark piece of legislation.

The act makes it very clear that a person need not endure the long time periods of today before he becomes eligible for pension coverage. Under the terms of the bill, any employee who is at least 25 years of age with 1 year of service will now be eligible for a company pension plan.

Strong vesting rules are also contained in this bill, which will allow the average worker greater flexibility in his efforts to achieve the highest level of economic security. By the imposition of these new rules, no longer will it be necessary for an employee to lose his pension rights, merely because he goes to another job.

Companies must choose between one of three vesting rules. The first would allow 100 percent vesting after 10 years of covered service; the second would allow 25 percent vesting after 5 years of covered service with 5 percent additional vesting for each year of service between the 6th and 10th years, and 10 percent additional vesting for the 11th through the 15th years; and the third would allow 50 percent vesting when age plus covered service equals 45, with 10 percent increases each year until 100 percent is achieved. These new rules, although somewhat confusing have one lucid theme: they are designed to insure that the worker will gain pension rights for his years of work.

The next important feature of this bill is the funding section. There can be no security in a pension plan if it is not funded properly. Improper funding whether arising through inexcusable ignorance or out-

right fraud leads to bankruptcy with the worker being the ultimate loser. This injustice will be eliminated by the act to insure pension solvency and protect the worker.

I am pleased to see that the strong House language on fiduciary responsibility is continued in the final version. There must be provisions to insure fair handling of a worker's money for if pensions are to be equitable and honest the rules on disclosures of all information relating to pension funds must be very strict and explicit. This is the only way to prevent abuses in the pension system. Without it there is no protection. Not only does the act require full disclosures about pension plans, but it also makes the parties managing the fund personally liable for their actions.

The requirement for funding, vesting, fiduciary responsibilities and disclosures will go a long way toward making plans safe, fair, and secure. There remains the risk that the employer company will go out of business, or be bought by or merged with another company. This one problem more than anything else causes great disillusionment and anger among workers. Once a company goes out of business, each of its employees lose their pension rights no matter what their length of service might be. There was an example in New York where the Rheingold Beer Co. went bankrupt and workers with as much as 25 and 30 years of service lost their pensions.

The termination insurance program contained in this bill will put an effective end to this scandal. Its operation is simple. A company is required to pay insurance premiums on its unfunded liabilities to an insurance program administered by the Secretary of Labor. If the company becomes insolvent, the insurance program pays the worker his pension under any and all circumstances. This guarantee means that never again will the worker lose what is his by right. It goes a long way toward making retirement the truly safe haven it should be for those who have worked hard all their lives.

Mr. Speaker, a long but constructive and important legislative episode is about to end with the passage of this report. The end result will be that the American worker can at long last look beyond his working days to economic security and happiness.

This Nation was founded by those who believed in and practiced the concept of hard work. Our growth and success as a nation has been dependent on millions of Americans continuing this principle for the common good of this Nation. Yet hard work did not always guarantee economic security, but today we are seeking to change this.

With the passage of this bill we will have completed the second important legislative accomplishment for the workers of this Nation. This first was the minimum wage law which increased hourly salaries for over 50 million Americans. Now this bill provides these and other Americans with security in their later years. We must show to the American worker that hard work remains a virtue—one which is needed to make America strong.

Mr. QUIE. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I want to take this moment to commend my colleagues who worked so hard on putting together H.R. 2, the pension bill.

The gentleman from Pennsylvania (Mr. Dent) on the Committee on Education and Labor, and the gentleman from Illinois (Mr. Erlen-

born) did the most work. I want to also commend the gentleman from Pennsylvania (Mr. Schneebeli) and the gentleman from Oregon (Mr. Ullman) on the Committee on Ways and Means. However, let me especially thank my colleague, the gentleman from Illinois (Mr. Erlenborn) who undertook the in-depth study of a very complicated piece of legislation.

On our side of the aisle I would say that nobody comes close to him. In fact, one can put the composite of all the Members on our side together, and that composite would not compare with respect to the knowledge and the contribution that the gentleman from Illinois (Mr. Erlenborn) has made. He has an in-depth understanding of this as few other individuals have. The time he has put into this work I think is commendable, and the other Members of Congress who have developed this kind of expertise are to be commended as well.

I believe, Mr. Speaker, that this is the kind of service that we should expect from Members of this House.

Mr. Speaker, I yield the remainder of my time, or 14 minutes, to the gentleman from Illinois and 15 minutes to the gentleman from Pennsylvania.

Mr. ERLENBORN. Mr. Speaker, I yield myself 7 minutes.

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Speaker, this is, in my opinion, a red letter day for many Members of the House and many people across this country, both employees and employers. This is, I believe, legislation which will go down as, if not the most important work of this Congress, at least among the most important bills that this Congress has had an opportunity to consider.

Mr. Speaker, it has been a long and rocky road we have traveled reaching this point today. There was very little agreement some 7 years ago when the gentleman from Pennsylvania (Mr. Dent) became one of the leaders in proposing reform of our pension system through legislation at the Federal level. Until that time there was little in the way of Federal legislation regulating the private pension system. Much resistance was apparent at the outset.

The gentleman from Pennsylvania (Mr. Dent) has persevered, and I think that he has learned a lot in the intervening years. He certainly has taught some of us a good deal over that course of time.

Just a few years ago the gentleman from Pennsylvania and I appeared to be quite far apart in our thinking on this legislation. However, I am happy to say that in the last year and a half or two years we have come to almost total agreement.

Mr. Speaker, this is a long, complex, and technical bill. I do not think that any Member would have time in the hour that is available to all of us to explain it thoroughly. I will say that the result of the conference was to endorse the work of the House. In most respects the conferees adopted the provisions of H.R. 2 as it passed the House.

H.R. 2 as it passed the House was the product of compromise. So I think this is really the best that can be achieved in the legislative system.

The bill touches on many areas in the field of private pensions. First of all, it provides minimum standards for those who are employed by a company operating a private pension plan governing when they may

be able to participate in that pension plan. It establishes minimum standards for vesting.

As some Members may recall, in the House we approved three minimum standards for vesting. The conferees agreed to these three standards.

The bill provides minimum funding standards so that the promise of a pension bill be backed up by putting money in the pension fund in an orderly fashion. It provides for the first time Federal fiduciary standards so that those who are in the position of a fiduciary will have clear standards to follow, as written into this law. It provides for reporting of important information from the pension plans to the Federal Government, where it will be available to those who need such information to determine whether the plan is being managed properly.

It provides for meaningful disclosure to the participants so that they may know what their rights are and what rights have been accrued and, in the event of termination, whether they have vested rights and how they may perfect those rights when they reach retirement age.

One feature which had been widely discussed has not been included in the report—and I think rightly so—and that is portability. The portability feature, as passed by the other body, was not true portability, as understood by most, in any event. Portability, as contained in the bill passed by the other body, would allow a person, if the plan provided for cashing-out vested benefits upon termination and he could put those proceeds of the cashing-out in a central portability fund.

The conferees did not agree to the central portability fund. However, I think we did agree to something that would be more meaningful and more helpful to the individual worker. We have provided, in lieu of the central portability fund, that the rights that might be cashed out could be placed by the employee in an individual retirement account. This could be done in the fashion of a tax-free rollover so there would not be any adverse tax consequences to the employee. I think this is the best that we can furnish to the employees in the field of portability.

I was not in total agreement with the gentleman from Pennsylvania (Mr. Dent) when the bill passed the House. The Members may recall the two items that bothered me were jurisdiction and termination insurance. I am happy to report that the conference did resolve the problem of jurisdiction in a fashion that I think was very responsible. We spelled out clear jurisdictional guidelines for both the Department of Labor and the Treasury Department so that in most instances plan participants and those who are managers of pension plans will know where to go for approval of a plan and where to go for the enforcement of individual rights.

Lastly, although it is not in title I, which was the jurisdiction of our Committee on Education and Labor, I am very pleased that in Title II we do have the provision for the creation of individual retirement accounts. I think this finally provides equity for those who are not self employed, and therefore cannot take advantage of H.R. 10, or the Keogh plan, and yet are not employed by an employer who furnishes them a company plan.

The individual retirement account provided for in this bill will allow those who are not self employed to establish on a tax-free basis a fund for their own retirement. I think that this provides, as I say,

equity, because the tax laws in the past have taken care of others, and not the individual who is not self employed and does not have access to a company sponsored private plan.

Mr. Speaker, I think it is a good conference report, and I hope it is unanimously approved.

Mr. DENT. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. Thompson).

(Mr. Thompson of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON of New Jersey. Mr. Speaker, I rise in support of the report of the conference committee on H.R. 2. Having served on the conference committee and having been privileged to participate in the momentous decisions embodied in this report, I feel we have an obligation to the millions of workers who will benefit from this legislation. We must approve the report of the conferees and, following what I hope will be speedy action by the Senate, send this legislation to the President for his signature.

As we are too well aware, this effort to secure protection for employees' private pension rights has followed a long and tortuous path through this House as well as the other body. In part, our difficulties have stemmed from the enormous complexity of the field to be regulated, as well as the recent political uncertainty surrounding the executive branch. I think that our success in dealing with this bill, in the face of these obstacles, offers new evidence of the continued vitality of the legislative branch. As a member of the Committee on Education and Labor, it has been my privilege to follow the leadership of my esteemed colleague from Pennsylvania (Mr. Dent) and our chairman, my good friend from Kentucky (Mr. Perkins), on this important piece of legislation. Their ceaseless efforts as spokesmen for our committee have had my full support and I hope they will accept my congratulations on behalf of millions of working men and women for a job well done.

Having helped in the task of working through the complexities of the conference report, I am proud to say that I believe we have reconciled the competing interests of participants and pension plan sponsors in a way that speeds the protection of the new standards without creating undue financial dislocation or immediate disruption of existing pension plans. By way of explanation, I would draw the attention of my colleagues to the provisions dealing with the effective dates for the vesting, participation and eligibility provisions contained in part 2 of title I. Under the conference substitute the provisions with respect to participation and vesting will apply to new pension plans in plan years beginning after the date of enactment of the conference report. For pension plans in existence on January 1, 1974, the general effective date of the participation and vesting provisions is to be plan years beginning after December 31, 1975.

Moreover, the general effective date of plan years beginning after December 31, 1975, applies in the case of collectively bargained plans in the same manner as in the case of unilateral plans. However, in order that the opening up of a contract to comply with the requirements of this bill will not require negotiations with respect to other matters, the conference substitute provides that a collective bargaining contract, in existence on January 1, 1974, which does not expire until

after the general effective date for existing plans, may be reopened solely for the purpose of allowing the plan to meet the requirements of this bill, without having to be opened for any other purpose.

Additionally, I would like to focus for a moment on what I believe to be the most important provision of the bill, termination insurance. In conjunction with the new minimum vesting and funding standards which will substantially reduce the risk of benefit loss on plan termination, the insurance provisions will guarantee the payment of benefits to all participants. In a recent study commissioned by the Departments of Labor and Treasury for the year 1972, it was discovered that 1,227 pension plans terminated involving 42,000 participants, of whom 19,500 persons in 546 plans lost benefits. Of those 19,500 participants who suffered benefit losses, 8,500 were either retired, eligible to retire or fully vested. The total benefit losses amounted to more than $48.7 million, of which $34.4 million would have gone to those in the retired, eligible to retire or fully vested categories.

In my own district, the Roebling plant of the Colorado Fuel and Iron Co. was closed June 30 thereby thrusting almost 1,400 men and women into the ranks of the unemployed. Many of these employees had 30 to 35 years of service in the plant and have chosen to retire. Although the plant ceased operation June 30, the pension plan for those employees continues in existence. The conference substitute covers all pension plant terminations of single employer plans occurring after July 1, 1974. Inasmuch as the Roebling pension plan was not terminated prior to July 1, 1974, within the meaning of the term as used in the conference report, the plant and its employees are covered by the reinsurance provision in title IV.

Mr. Speaker, on behalf of millions of American working men and women, I urge a favorable vote on the conference report.

Mr. DENT. Mr. Speaker, I yield myself such time as I may consume.

(Mr. Dent asked and was given permission to revise and extend his remarks.)

Mr. DENT. Mr. Speaker, I would be very remiss at this point if I did not acknowledge the aid and the help of the gentleman who is the ranking member on this committee, the gentleman from Illinois (Mr. Erlenborn). I want the House to know that without his efforts and his understanding and his complete cooperation it would not be possible for this House today to vote on a piece of legislation that I believe goes a long way toward correcting the many faults and errors that were in the original pension system in this country.

The gentleman from Illinois (Mr. Erlenborn), was a great advocate of what I think is one of the greatest reforms in the whole bill. The gentleman insisted from the very beginning that a complete and full disclosure of a pension participant's standing within that pension plan be made available, and that it should be written in such a way that individuals would understand exactly what his position was, what his entitlement was, and exactly where he stood at the moment of his inquiry.

This, to my mind, is one of the cornerstones of reform, because when we started out we started out with only one aim in view and that was to give to a pension participant his entitlements under the contract of the pension plan he belonged to. In this whole program we have come before this House, both Mr. Erlenborn and myself, have said

that we do not expect to bring forth a perfect vehicle. We know that there will be many trials and errors in its interpretation and in its administration, but we have also promised the House that if and when these particular problems crop up we will come to the House jointly and help in trying to resolve the problems in favor of a perfect working pension system in the United States.

I want to also compliment the gentleman from Oregon, the chairman of the Committee on Ways and Means, who has worked hand-in-hand diligently and with his able staff has contributed a great deal to what I think is the first time in history where four subcommittees have joined in one piece of legislation and have come out together unanimously for that piece of legislation. Mr. Ullman deserves the gratitude of this House, as well as Mr. Erlenborn and all the members of the four committees, for the work that they have done, and I cannot pass this moment up without saying to the Members that our chairman of the full committee, Mr. Perkins, has been outstanding. He has allowed this committee to work its will with encouragement and advice and counsel when we needed.

At this time, Mr. Speaker, I should like to take this opportunity to reiterate my regard and respect for all of the members of the committee and the conferees.

I advise every Member of Congress to read the report well so that he will be able to answer the many questions that I know he will be asked when he gets back in his own district.

The mail that is coming into my office, if that is any indication, indicates the Members are going to receive a great number of inquiries on this legislation. Our committee stands ready to give the Members all of the cooperation we can in order to make their task of answering these questions easier. We know they will come, for the simple reason that this is an intricate piece of legislation, it is landmark legislation, it is the first time in the history of this country we have stepped into a private pension system, most of it negotiated between employers and employees. In the early beginning we were told that this was not a proper matter for legislation.

However, as time went on and as thousands, yes, millions, of workers lost their rights under the present system of private pensions in the United States, more and more individuals in the banking field, the investment field, the insurance field, the actuaries and trustee groups, and individual members of local plans, officers of those plans, in fact, employers all over the United States came to the door of our committee.

I must compliment at this time the task force that we put together, Mr. Erlenborn and myself, and the two directors whom we named, who have diligently worked entirely on the contents of the legislation without friend or favor to anybody. They worked diligently to get legislation before this Congress that will do, as I said, what we started out to do: to make sure that all the moneys put into any pension plan for or on behalf of or directly by the participant are guaranteed to him at some point in time and that he will receive that money and its earnings as his contribution toward his retirement.

If we work together in the future as we have now, we will be able to iron out the problems.

I want to say to the Members that I am gratified at this moment that I found so many willing workers, so many willing helpers who, like myself, started in this field very green. Very few of us had any knowledge whatsoever of the 100-and-some-odd thousand plans, it is to the credit of our committee that we were able to come here with legislation wherein all injuries are kept to a bare minimum. To the extent injuries are discovered, I guarantee the Members that we will come before them to correct that injury.

It was not our intent to injure the private system. We were absolutely determined that we would strengthen the private pension system, because with the private pension system and social security we will be able to make life compatible for those who retire at 65 or older.

Mr. Speaker, I would like to take this opportunity to express my gratitude to my fellow conferees and their respective staffs who have labored so long to work out the details of our conference report on H.R. 2. What we have before us today is the product of 20 meetings of the conference committee and interminable hours of work by staff. The chairman of the Committee on Education and Labor, the gentleman from Kentucky (Mr. Perkins) has once again demonstrated those qualities of leadership which have marked his distinguished career. Additionally, I would like to note the tireless efforts of the gentleman from Oregon (Mr. Ullman) who never once waivered in his dedication to resolving the differences between the Senate and House measures.

I am sure that none will be surprised to find that I support this conference report, but my enthusiasm for this legislation cannot be contained by so simple a term. I have been engaged in a number of legislative battles in my time, many of them right here in this Chamber, none were more important than the initial fight to protect the retirement security of workers and none have resulted in so fair a conclusion. Perhaps I anticipate too much in expecting the House to agree to this conference report, but I think not. We have before us the embodiment of the aspirations of millions of Americans. I cannot believe that this body would impede the speedy realization of those legitimate dreams of financial security.

I will not pretend that some do not criticize this report. As is always the case with those of us who choose to follow a path midway between unrealistically fanciful solutions and "do nothing," some will say we have gone too far and others will say that we have done too little. With respect to those who counsel no action to relieve the plight of retired workers, I have only a profound sense of loss. They will never experience the sense of fellowship that is our reward when we are able to relieve the fears and misery that afflict other human beings.

To those who decry our efforts as inadequate or in the words of a recent press release by Mr. Ralph Nader "a terrible disappointment." I would join my distinguished colleague from Illinois (Mr. Erlenborn) in likening them to the man, who standing by the sea with eyes cast heavenward, complained "and another thing Lord there's too much salt in the water."

To those who, recognizing the wisdom of the middle course, nonetheless find fault with our report, I promise to continue to fight for improvements in the retirement security offered by private plans. I am

not convinced that the provisions contained in our conference report are a penultimate solution to all the problems of retirement security for our work force, but it is a grand beginning. There are problems not contemplated in its provisions and we will be busy for many years attacking those problems, as well as strengthening the standards we will be voting on today.

We have within our grasp a victory of historic proportions for those working men and women whose efforts fuel our economy. For the first time they will enjoy the protection of minimum Federal standards in five areas.

Minimum vesting standards: Partial retirement benefits will be earned even by those who serve less than full careers with employers.

Currently, the vast majority of those covered by private pension plans can have no protection against forfeiture of their accrued benefits, in the event they leave coverage before attaining retirement age or fulfilling stringent minimum service requirements extending in some cases to as long as 30 years.

Minimum funding standards: Defined benefits will be required to be funded currently as they accrue and past service credits will be amortized over reasonably short periods of time. These new requirements will help prevent the accrual of benefits without concurrent payments into the plan to pay those benefits when they come due.

Termination insurance: Defined benefit plans will be covered by insurance to protect participants against the loss of benefits on account of plan terminations prior to completion of the funding cycle.

This provision will provide a backup guarantee to every pension plan that, regardless of the economic fortunes of the companies sponsoring the plan, its obligations will be met.

Fiduciary standards: All plans will be subject to new Federal trust standards which will delineate the rights and responsibilities of those who are covered by and those who deal with pension plans.

These standards, embodying existing trust concepts, will prevent abuses of the special responsibilities borne by those dealing with plans.

Disclosure and reporting: All plans will be required to provide each participant with certain limited information, publish comprehensive financial and actuarial data and provide special reports on the occurrence of certain critical events. The availability of this information will enable both participants and the Federal Government to monitor the plans' operations.

Numerous minor technical problems were dealt with in drafting the specific provisions which make up these major subject areas. I think it is a tribute to the concern shown by your conference committee that relatively minor technical points were weighed and every effort was made to carefully draw the language of our report to resolve these technical questions.

Specifically, I would like to point out that in drafting the provisions of the benefit accrual requirements contained in section 204(b)(1)(B) and 411(b)(1)(B)—the 133-percent test—social security benefit levels for future years and other factors relevant in computing benefits including salary differentials are to be held constant. With respect to compensation related fluctuations in rates of accrual or in an appropriate case fluctuations on account of differing rates of contribution it

is the intention that such fluctuations be disregarded for purposes of applying the 133-percent test.

Similarly in considering the question of allocating the additional costs of providing the new required survivors option, the conferees decided to allow the plans to adjust the joint and survivor option benefit to an actuarial equivalent of the single life annuity. As was made clear in the report of the Committee on Ways and Means—No. 93–807—the plan is not required to "subsidize" joint and survivor benefits. The approach adopted by the conferees would contemplate either individual case by case adjustments for each joint annuity or aggregate adjustments based on the plan's overall experience. In neither case could the adjustment exceed an actuarial reduction in the single life annuity.

In the area of reporting and disclosure, we had to deal with certain unique features of certain plans—in particular, the recordkeeping burdens placed on multiemployer plans. In an effort to anticipate these problems we gave the Secretary of Labor authority to alter the recordkeeping requirements. For example, section 209(a)(2) requires multiemployer plans to maintain records in accordance with regulations to be prescribed by the Secretary of Labor. It is contemplated that these regulations would not be more onerous than the requirements of regulations prescribed under part 1 of title I of the act and would permit alternative methods of compliance as described in section 209(a)(2) should recognize that necessary records may be maintained by governmental sources such as the records maintained by the Social Security Administration. In cases of this type, a plan administrator may be able to meet the requirements of maintaining these records by utilizing such governmental information. Additionally it is expected that the Secretary of Labor will waive the new reporting and disclosure requirements—under sections 101–111 of the bill—for buy-out agreements involving retiring or deceased partners—under section 736 of the Internal Revenue Code.

During the course of our activity on this legislation, I have been impressed by the degree to which private plans have come to rely on the records maintained by the Social Security Administration. We have chosen to rely on their capability in maintaining the individual records for terminated participants. I know that this valuable public service imposes a burden on that agency, but I would hope that my colleague from Oregon (Mr. Ullman) would join with me in expressing the importance attached to the Social Security Administration continuing its important role.

Another issue dealt with in the conference report is the policy against what has been described as "bad boy" clauses. While firmly articulating this policy, the conferees expressly provided in section 203(a)(3)(B) that a plan be permitted to suspend benefits under certain circumstances. This section further authorizes the Secretary to prescribe regulations necessary to carry out the purposes of this provision. It is contemplated that those regulations would permit a plan's provisions concerning suspension to take into account the particular facts and circumstances of the industry; the objectives of industrial stability; the conditions of employment and earnings in the industry; the benefit payment period of the plan; and the burden of onerous and

costly administrative procedures imposed upon the plan by these provisions.

In certain industries covered by multiemployer plans, for example, the garment industry, intermittent and casual employment is common. Under these or similar circumstances, the regulations prescribed by the Secretary should permit plan provisions which would establish reasonable rules of governing the exits and reentry from the status of retired participant of the plan and working participant of the plan, and the duration of time during which benefits may be suspended.

A reference in section 203(a)(3)(B) to "such period as the employee is employed does not refer literally to the exact number of days and hours of employment, but to a reasonable period during which employment occurs. For example, plan regulations in certain industries might provide that a person will be considered employed during a reasonable period of time if he elects to participate in employment at any time during that period of time.

In the case of transfers of assets on termination of a plan, section 403(d)(2) authorizes the Secretary to provide regulations. As explained by the managers, it is expected that regulations will provide for transfer of assets upon termination of a plan, but I think it is clear that these regulations will be able to take into account the real needs in certain situations.

By way of example, in the case of collectively bargained plans established in an industry for the employees covered or working in that industry, it may be desirable from time to time for the overall benefit of the beneficiaries to transfer assets or funds from one plan to another because of existing circumstances. For example, a health and welfare fund or a supplemental unemployment benefit fund may wish to transfer assets to a retirement fund covering the same beneficiaries to enhance the actuarial soundness of the retirement fund.

It is understood that termination includes substantial transfers of assets which might be described as a partial termination. The Secretary may approve such transfers where accrued rights are not impaired and where the transfer is in the best interest of the employees covered by the plans taken as a whole. It is recognized that the participants may not be identical in each of the plans involved in a particular case.

Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation. We followed to a large extent the same approach as in Public Law 93–222, 87 statute (414) where the regulation of health maintenance organizations was foreclosed to State authority—section 113(a).

The conferees, with the narrow exceptions specifically enumerated, applied this principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans. Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State, subdivision thereof or any agency or instrumentality thereof—including any professional society or association operating under

code of law—which would affect any employee benefit plan as described in section 4(a) and not exempt under section 4(b).

On page 8 of the conference report definition No. 31 includes within the reporting requirement union apprenticeship programs. We clearly expect the Secretary of Labor to continue his present policies with respect to such plans and exempt them from the reporting requirements unless a clear reason for changing that policy is shown.

Mr. ERLENBORN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me make a point of additional observation that I should have made when I originally spoke, which is to compliment the gentleman from Pennsylvania for his foresight in asking for the establishment of a task force within the Committee on Education and Labor which was devoted to the sole problem of becoming expert in and handling legislation in this field of private pension reform.

Let me say also that we were blessed on that task force over the last 2 years to have the services of Mr. Vance Anderson, formerly of my State of Illinois and Mr. Russell Mueller, two outstanding experts in the field of private pension regulation. It was only because of the expertise available to our task force in the form of these two employees of the task force that we were able to do the kind of job we have.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on this conference report on H.R. 2.

The SPEAKER pro tempore (Mr. Smith of Iowa). Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ULLMAN. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I want to commend all of the members of the two committees of the House, the Education and Labor Committee and the Ways and Means Committee, and their staffs for the long extended hours and hard work that went into this monumental piece of legislation. This legislation is extremely complex. It affects the lives of up to 30 million people and 300,000 or 400,000 private pension programs in this country.

It has been a painstaking task and very difficult from the point of view of jurisdiction. We have two major committees of the House involved in the jurisdiction here and we have proven to the House that committees can work together when there is a problem of double jurisdiction and that we can work out a formula to resolve such problems. For a while last fall the Members will remember it was extremely difficult to try to find a way, but we did find the way.

Mr. BURKE of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. ULLMAN. I yield to my friend, the gentleman from Massachusetts, a member of the committee and a member of the conference committee and who served in that capacity as one of the most diligent members hour after hour every afternoon. I yield to the gentleman from Massachusetts (Mr. Burke).

Mr. BURKE of Massachusetts. Mr. Speaker, I thank my good friend, the gentleman from Oregon, for yielding.

I rise in support of the conference report and I also join with the gentleman from Oregon in complimenting the two committees as well as the gentleman from Pennsylvania (Mr. Dent) and the gentleman from Illinois (Mr. Erlenborn) and the gentleman from Pennsylvania (Mr. Schneebeli) and all the members on both committees who have given unstintingly of their time to bring about this far-reaching legislation.

I would like to ask the gentleman for some clarification concerning the language in the report.

The language of Report No. 93–1280 on page 279 relative to amounts designated as employees' contributions is ambiguous. The purpose of the conferees was only to assure that after December 31, 1973, employee contributions so designated would be taxable at time of payment. It is not the intent of the conferees to speak to existing law one way or the other.

Mr. Ullman. The gentleman, I would say, raises a very important point. It is not our purpose to affect in any way the interpretation of existing law.

Mr. Burke of Massachusetts. I thank the gentleman for his clarification.

Mr. Ullman. Mr. Speaker, I would like to yield to our distinguished colleague, the gentlewoman from Michigan, also a member of the conferees (Mrs. Griffiths).

Mrs. Griffiths. Mr. Speaker, some years ago the indicated amount of pension funds assets were about $4 billion. I held the first hearings that were ever held on this problem through the Joint Economic Committee.

I would like to say that we pointed out then and the committee agreed that it is certainly in the interest of the Federal Government to encourage these tax-free pension funds and that the Government should see that that money is paid out at last to the people for whom it has been set aside.

I would like to congratulate the genetleman in the well and all those who have worked so long and hard on this matter. I personally feel we have probably made errors, but I am sure they can be corrected and that we can guarantee that the money withdrawn from tax-free funds will go to those for whom it was intended, the workers of America.

Mr. Ullman. Mr. Speaker, the gentlewoman has stated the issue very well and I congratulate her for her hard work.

The Speaker. The time of the gentleman has expired.

Mr. Ullman. Mr. Speaker, I yield myself 5 additional minutes.

I would like to pay my respects to the staff that worked so hard, the staff of the Labor Committee, Mr. Anderson and his group, and the Joint Committee on Internal Revenue Taxation, Larry Woodworth and his group, who worked long hours and were extremely diligent, and my good friend, the gentleman from Pennsylvania (Mr. Dent), with whom I worked so closely and so intimately during all these long months since we began negotiating on this subject matter.

I want to say that there is no gentleman in the House that it has been my pleasure to work with, with whom I have had a more congenial relationship on this matter.

I urge the adoption of the legislation that is now before us, the Employee Retirement Income Security Act of 1974. Because pensions are

so technical a subject, it has not been an easy job to reconcile the many differences between the House and Senate pension bills. However, I believe that the decisions of the conferees which are embodied in this bill have produced a highly successful pension bill. As you know, as this legislation worked its way through each House of the Congress, it received the joint consideration of two different committees—the tax-writing committee and the Labor Committee. Now, in the present bill, through the action of the conferees, we have a product which embodies the combined experience and expertise of the Labor and tax-writing committees of both Houses. The result is landmark legislation which will aid many millions of employees by making more adequate provision for their retirement needs.

This legislation provides urgently needed reform in the pension area. But, at the same time, it continues the basic governmental policy of encouraging the growth and development of voluntary private pension plans. For example, under this legislation, the favorable tax treatment that has been so instrumental in encouraging the growth of nondiscriminatory plans over more than three decades will continue. Indeed, in some respects, this bill expands such favorable tax treatment by providing more reasonable limitations on the amounts that self-employed people can set aside in their own retirement plans and by allowing individuals not covered by pension plans to set up a new type of individual retirement plan for themselves.

As under prior law, in order to qualify for this favorable tax treatment, pension plans will have to satisfy the present rules in the Internal Revenue Code designed to limit the favorable treatment to plans which do not discriminate in favor of highly paid employees as compared to the rank and file employees. However, under this legislation, to secure this favorable tax treatment, plans will also have to satisfy additional requirements which are designed to make them a more effective means of providing retirement income. These new requirements pertain to coverage, vesting, funding, fiduciary requirements, and plan termination insurance.

I want to emphasize that these new requirements have been carefully designed to provide adequate protection for employees and, at the same time, provide a favorable setting for the growth and development of private pension plans. It is axiomatic to anyone who has worked for any time in this area that pension plans cannot be expected to develop if costs are made overly burdensome, particularly for employers who generally foot most of the bill. This would be self-defeating and would be unfavorable rather than helpful to the employees for whose benefit this legislation is designed. For this reason, we have been extremely careful to keep the additional costs very moderate. The additional costs resulting from the new minimum vesting requirements in the bill, for example, for the most part is expected to range only from 0 to 1.5 percent of payroll.

Let us turn now to the provisions of the pension bill. In view of its complex nature, I will be able here to sketch out only the major outline of the legislation. But, I think I can tell you enough to show how good a bill it is. In the majority of cases, the conferees accepted the House provisions. In some cases, we accepted the Senate provisions. And in others, we adopted a compromise provision somewhere between the provisions adoped by both Houses. However, I think it is fair to say

that these departures from the House bill generally constitute an improvement, reflecting the additional time we were able to give to the particular issue.

As under the House bill, the conference bill provides that qualified plans may not, because of age or service, exclude any employee who has attained age 25 and has completed 1 year of service. The conferees also accepted the House provision permitting a plan to require 3 years of service for all employees before participation if it provides full vesting immediately on participation. In addition, any plan which is maintained exclusively for employees for a governmental or tax-exempt educational organization which provides full and immediate vesting for all participants may have a participation requirement of age 30, with 1 year of service.

However, the House provision prohibiting qualified plans from excluding from participation any employee who has completed 3 years of service regardless of age was rejected on the ground that it would have required plans to extend coverage for extremely young employees who work for the firm a few years and then leave before accumulating enough service to acquire significant benefits. The latter provision would have involved significant administrative work and expense for plans without providing commensurate benefits for the young employees. However, the conference agreement adopts an alternative provision to help assure the benefits of pension plan coverage to employees who start working at young ages and continue to work for the firm for substantial periods of time. Under the latter provision, any employee who starts working for the firm at age 22 or younger and then meets the age requirement for participation by serving until the age of 25 will be given credit for the 3-year period from age 22 to 25 for purposes of determining the percentage of his benefits that are vested.

As under the House provision, a defined benefit plan—that is, a plan which pays out specified benefits—may exclude from coverage employees who are within 5 years of normal retirement age when they begin employment. The purpose is to encourage the employment of older workers by eliminating any obstacles to such employment which might exist, because of the extra costs involved in covering them under defined benefit plans.

The conferees also adopted provisions regarding what constitutes a year of service for purposes of applying the participation requirements which are superior to the rules in either the House or Senate bills.

As under both the House bill and the Senate bill, the pending legislation requires qualified plans to grant covered employees nonforfeitable rights to their own contributions. However, in the vital area of vesting of employer contributions, which is essential to assure that employees will not be subject to unreasonable forfeitures, the bill generally adopts the minimum standards in the House bill. The bill does not force all retirement plans into one rigid vesting mold; instead, it provides three alternative vesting options in order to give the hundreds of thousands of retirement plans flexibility to provide adequate vesting protection for their covered employees in the light of the various circumstances and conditions confronting them.

Under one option, a qualified plan would be required to provide an employee with vested rights to at least 25 percent of his accrued bene-

fits from employer contributions after 5 years of service, plus an additional 5 percent for each of the next 5 years and 10 percent for each of the next following 5 years. This means that under this option, the employeee must be vested in at least 50 percent of the employer-provided benefits after 10 years of service and 100 percent vested after 15 years of service.

A second vesting option is to provide employees a 100-percent nonforfeitable right to accrued benefits derived from employer contributions when they have achieved at least 10 years of service.

A third option permits firms which wish to provide faster vesting for their more mature employees than for their younger ones to do so by taking into consideration the age of the employee as well as his service for purposes of computing his vested rights. Under this option, the plan provides a covered employee who has at least 5 years of covered service a vested right to at least 50 percent of the accrued benefits financed by his employer's contributions when the sum of his age and years of service equals 45; the minimum required vesting percentage would thereafter be increased by 10 percentage points a year in each of the following 5 years. However, under the option, an employee who has completed at least 10 years of service must be given a vested right to at least 50 percent of the accrued benefits after 10 years of service and an additional 10 percent vested right for each year thereafter.

In general, the vesting requirements of the conference bill apply to all accrued benefits, including those which accrue before the effective date of the provision. Years of service prior to the effective date also are to be counted for purposes of determining the extent to which the employee is entitled to vesting.

However, for vesting purposes, a plan is not required to take into account service performed before January 1, 1971, unless the employee has at least 3 years of service after December 31, 1970. The purpose of the provision is to avoid imposing on plans very heavy costs for providing retroactive vesting for employees who have already terminated their service. This might jeopardize benefits for employees still covered under the plan and could involve very serious recordkeeping problems.

In addition, under the conference agreement, the vesting rules become completely effective on the effective date instead of going into effect gradually over a 5-year period after the effective date, as under the House bill. This change was made because, after consideration, your conferees agreed that it was essential for the protection of covered employees that they be given the full protection of the vesting provisions on the effective date without any delay, particularly since the costs involved in financing such vesting are expected to be moderate.

The participation and vesting standards adopted by this legislation become effective for new plans on the date of enactment; for existing plans, these standards become effective in plan years beginning after December 31, 1975. The later effective date for existing plans was provided in order to give them time to make the necessary changes to conform to the new requirements.

In the case of certain supplementary benefits provided pursuant to a collective bargaining contract existing on January 1, 1974, the ac-

crued benefit rules under the vesting standards become effective at the termination of the contract but not later than plan years beginning after December 31, 1980.

Also, to provide additional flexibility in regard to vesting standards, the Secretary of Labor is given the authority to prescribe temporary variations in the vesting standards under certain conditions where regular vesting standards would be harmful to the plan and to the covered employees. Such temporary variations may be granted initially for a 4-year period followed by a variation for another 3 years.

The minimum funding standards in the conference bill, which are designed to help assure that plans will accumulate sufficient funds to pay their pension obigations when they fall due, also represent an improved version of the House provisions. These standards generally apply to private defined benefit plans—that is, to plans which specify that participants are to receive a designated amount of benefits. Profit sharing and stock bonus plans are not subject to the funding standards since these plans do not specify the amount of benefits but instead pay out whatever benefits the funds will purchase on the date the benefits begin.

Under the general funding standards, employers maintaining single-employer plans not in existence on the enactment date of the legislation must pay normal costs currently and amortize their accrued past service liabilities in level payments over no more than 30 years. A similar amortization period of no more than 30 years is required for past service liabilities arising as a result of single-employer plan amendments after the effective date.

However, in recognition of the fact that large numbers of plans assumed heavy past service liabilities prior to any requirement to amortize such liabilities, plans in existence on the effective date of the legislation are allowed a longer period—up to 40 years—to amortize past service liabilities existing at the beginning of the first plan year to which the requirement applies. In addition, multiemployer plans are allowed to amortize all past service liabilities, including those created after the effective date of the legislation, over a period of up to 40 years. This recognizes that multiemployer plans generally have an added element of financial strength in that their contributions come from a number of employers who, as a group, are less likely than comparable single employers to experience business difficulties.

Although the funding standards in the conference bill generally follow the House provisions, your conferees agreed to the deletion of a House provision calling for the funding of the difference between accrued vested liabilities and plan assets over a 20-year period. This funding standard would have required more rapid funding for some plans than the general funding standards which I have described. It was deleted because the conferees agreed that the general funding standards provide adequate protection in helping to assure that plans will accumulate sufficient sums of money to pay their obligations.

We added a new alternative standard which is designed to be used for plans using funding methods which require contributions at least equal to those under the entry age normal method and whose assets, at market value, approach their accrued liabilities. Under this alternative standard, an employer can satisfy his funding obligations for the year

by contributing to the plan an amount which equals the normal cost of the plan plus the difference between the plan's liabilities and the plan's assets valued at fair market value.

As under the House bill, the conference bill allows experience deficiences to be funded in level amounts over a period of up to 15 years for single-employer plans and up to 20 years for multi-employer plans.

In order for these funding standards to perform their functions efficiently, it is essential that the actuarial assumptions on which funding is based be sound. For this reason, the conference bill requires the actuarial assumptions of each plan to be certified by an actuary every 3 years or more frequently if required by the Internal Revenue Service. Standards are also provided as to the enrollment of actuaries for this purpose.

As under both the House bill and the Senate bill, penalties in the form of an excise tax on the employer are imposed to the extent that the amounts contributed to the plan fall short of those called for under the funding standard.

However, a number of relief measures are provided to make sure the funding requirements do not cause hardship and do not result in the disruption of pension plans. Under certain specified conditions where these funding requirements would result in business hardship, the Secretary of the Treasury may provide a year-to-year waiver of these requirements. In addition, in such cases the Secretary of Labor may also grant an additional 10 years on top of the period of time generally provided to amortize past service liabilities and experience losses. However, the conference bill deletes a provision in the House bill which would have given the Secretary of Labor the authority to describe an alternative minimum funding standard in certain cases of hardship.

For new plans, the funding provisions are effective for plan years beginning after the date of enactment of the bill. For existing plans, the funding provisions are effective for plan years beginning after December 31, 1975.

For collectively bargained plans—both single-employer and multi-employer plans—the funding standard is not effective until the termination of the contract existing on January 1, 1974, but in no event later than plan years beginning after December 31, 1980.

We were also successful in conference in deleting a Senate provision establishing a central portability fund. The latter involved the establishment of an elaborate and cumbersome mechanism which, though beneficial in purpose, would have been seldom used. In its place we provided a simple and effective means whereby individuals who are separated from service will be able to transfer their pension funds to tax-exempt individual retirement accounts—which I shall describe later.

The conferees also improved a number of House and Senate provisions which are vital for the protection of the pension rights of employees. This includes full disclosure of the features and operation of pension plans. Standards are established for fiduciaries of pension plans to protect against possible misuse of pension funds. Fiduciaries are required to comply with a prudent man rule, and transactions likely to prove inimical to the interests of the plan participants are

specifically prohibited. Here, the force of both the labor laws and the tax laws are brought to bear to protect against abuses in regard to pension funds. The labor law provisions provide rules and remedies similar to those under traditional trust law to govern the conduct of fiduciaries. Also, the tax law provisions apply an excise tax on disqualified persons who violate the new prohibited transaction rules. In addition, plan investments must meet a diversification requirement unless, under the circumstances, it is clearly prudent not to do so. In this connection, limitations are placed on the investment of pension plan assets in employer securities.

The conference bill provides for the establishment of a system of plan termination insurance which is superior to the comparable provisions in either the House or the Senate bill. A Pension Benefit Guaranty Corporation to administer this insurance is set up within the Labor Department with a Board of Directors composed of the Secreary of Labor as Chairman and the Secretaries of Commerce and Treasury. The plan termination insurance is mandatory for private defined benefit plans that either affect interstate commerce—and in the case of nonqualified plans that have met the standards for qualified plans for 5 years—or that are qualified under the Internal Revenue Code. However, the plan termination insurance does not cover H.R. 10 plans or plans established by personal service corporations which have fewer than 26 participants. The insurance is financed by premiums paid by covered plans. In addition, the Pension Benefit Guaranty Corporation is authorized to borrow $100 million from the U.S. Treasury.

The insurance benefits are, of course, to be paid only where the assets of the terminated plan are insufficient to pay the specified benefits under the plan. The insurance covers 100 percent of average wages during the individual's highest paid 5 years, but not more than $750 a month.

Under the conference bill, all vested basic retirement benefits of covered defined benefit plans are insured up to the insurance limitations—other than benefits vesting only because of termination as a result of Internal Revenue Code requirements. In addition, any nonbasic benefits the corporation elects to insure would also be covered. However, where the plan provision providing the benefit had been in existence for less than 5 years as of the date of the termination of the plan, coverage is phased in at the rate of 20 percent per year until the benefit is fully covered after it has been in effect for 5 years.

Employers are liable for benefits paid under the insurance program up to 30 percent of their net worth. However, insurance must be made available to employers to protect themselves against this contingent liability.

In order to provide prompt and effective protection for the employees concerned, insurance coverage for plans established by single employers becomes effective for plans terminated after June 30, 1974. Coverage for multiemployer plans generally starts for terminations after December 31, 1977. However, to prevent hardship, the Pension Benefit Guaranty Corporation, subject to certain limitation, is given discretionary authority to provide benefits to employees covered by multiemployer plans which terminate after the date of enactment of the legislation and before January 1, 1978. However, such discretionary

benefits cannot be paid if they would jeopardize the coverage of multiemployer plans terminated in 1978 and later years.

The protection offered by this legislation extends not only to the employee but also to his spouse. Plans are required to give the covered individual what amounts to an option to receive his retirement benefits in the form of a joint and survivor annuity paying his spouse at his death, an annuity of at least one-half of the annuity during both lives.

Provision has also been made for effective coordination between the Treasury Department and the Labor Department in enforcing the standards imposed by the bill. Here the emphasis is on bringing to bear the full enforcement powers granted to both Departments under the bill as well as avoiding duplication of effort for both the administering agencies and plan administrators. For this reason, where the act requires the Treasury Department and the Labor Department to carry out provisions relating to the same subject matter, the Secretaries of these Departments are instructed to consult with each other in the development of rules, regulations, practices, and forms, to the extent appropriate for efficient administration.

Finally, the conference bill contains a number of provisions which are designed to provide more rational and equitable tax treatment under pension plans. These new provisions generally follow the approach taken in the House bill, although, in some cases, the Senate provisions have been taken, and practically all of the provisions have been improved technically.

The conference bill goes far to remove a longstanding inequity by granting individuals who are not covered by any kind of qualified pension plan a limited tax deduction for their retirement savings. In 1975 and later years such individuals will be allowed to take deductions for annual contributions to a new type of individual retirement plan up to 15 percent of earned income or $1,500, whichever is less.

These retirement plans will be available to all employees who are not active participants in a qualified retirement plan, a governmental pension plan, or an annuity plan established by a tax-exempt or public educational institution under section 403(b) of the Internal Revenue Code which confers most of the tax advantages associated with qualified plans.

The individual retirement plan may be established by an individual's employer or union as well as by himself.

To encourage the widespread use of such individual retirement plans, the conference bill provides that the contributions can be invested in a wide range of investments, including special Government retirement bonds, annuity contracts, life insurance endowment contracts, mutual funds, corporate securities, banks, and credit unions.

A second set of provisions substantially reduce the longstanding discrimination against the self-employed resulting from the fact that their retirement savings under H.R. 10 pension plans have been limited severely while comparable pension limits do not apply to their corporate counterparts. This change also reduces the present inducement for self-employed people to incorporate merely for pension purposes. Starting in 1974 the maximum deductible H.R. 10 contributions a self-employed person may make on his own behalf are increased from the present level of 10 percent of earned income up to $2,500 a year, to 15 percent of earned income up to $7,500 a

year. Comparable limitations are applied to the benefits that may be paid to self-employed individuals by H.R. 10 plans which are of the defined benefit type under regulations to be prescribed by the Secretary of the Treasury or his delegate.

To allow self-employed people with fluctuating earned incomes to set aside a specified minimum amount regularly for retirement, a self-employed individual is permitted to deduct annual contributions to an H.R. 10 plan amounting to $750 or 100 percent of his earned income, whichever is less, even though this is in excess of the regular deduction limits.

The new more liberal limitations on contributions or benefits for self-employed people under qualified plans also apply to shareholder employees of subchapter S corporations—small business corporations—who are generally subject to the same limitations as self-employed people under qualified plans.

The conference bill does not include a Senate provision which would have permitted the allowable deductions for all the partners covered under a particular plan to be pooled and then allocated to particular partners under the provisions of the plan. This pooling arrangement was rejected, because it would have permitted inequitable distributions of such deductions in favor of the most highly paid and influential partners in the firm.

Self-employed people will be allowed to count no more than $100,000 of their earned income in computing pension contributions or benefits for themselves. As a result, they will have to provide significant pension contributions for their regular employees who are covered by the pension plan if they wish to utilize the full maximum tax allowance for their own pension contributions.

A third set of provisions makes the tax laws regarding pension plans fairer by limiting the amount of the contributions or benefits that can be provided to any individual under such a plan. The fact that present law does not provide such specific limitations has made it possible for extremely large contributions and benefits to be made under qualified plans for some highly paid individuals. While there is, of course, no objection to large retirement benefits in themselves, it is not appropriate to finance extremely large benefits in part at public expense through the use of special tax treatment. To avoid abuses, the conference bill adopts the limitations in the House bill, with a number of technical improvements. These limitations are generous enough to permit substantial retirement benefits which are adequate judged from any reasonable standard.

Under defined contribution plans—money-purchase pension plans and profit-sharing plans—the sum of the employer's contributions for the employee, a specified portion of the employee's own contributions, and any forfeitures allocated to the employee cannot exceed 25 percent of the employee's compensation or $25,000, whichever is less. Employee contributions to defined contribution plans are taken into account for purposes of this limitation. However, for this purpose there is excluded the greater of, first, employee contributions amounting to 6 percent of compensation or second one-half of the employee's contributions.

For plans which provide defined benefits, the limit is in terms of the amount of annual benefits that may be paid to a participant. More

specifically, the annual benefit paid under such plans cannot exceed 100 percent of the participant's average compensation for his highest 3 years of earnings—regardless of the age at which the benefits start—or $75,000 beginning at age 55 or later, whichever is less. Where the annual benefit starts before age 55, the $75,000 anual limit on benefits is adjusted downward actuarially. However, to avoid any possible adverse effect on individuals with relatively modest retirement benefits, this benefit limitation does not apply to retirement benefits which do not exceed $10,000 for the plan year or for any prior plan year.

The $75,000 annual limit applies to a benefit financed by the employer which is payable in the form of a straight life annuity beginning at age 55. Correspondingly higher benefits may be paid to the extent that they are financed by employee contributions. No actuarial adjustment is required to be made in the maximum annual limit on benefits under defined benefit plans where ancillary benefits which are not related to retirement are provided. For example, no downward actuarial adjustment in the limit is to be required for disability benefits before normal retirement age. In addition, no downward adjustment is to be made for a normal joint and survivor feature.

Moreover, to prevent abuse, the full maximum benefit may be paid only to individuals who have 10 years or more of service. Where an individual has served for less than 10 years, the maximum permissible benefit is reduced proportionately.

The contribution and benefit limits are applied in a way which prevents any individual from securing higher limits for himself merely because he is covered by several retirement plans financed by the same employer. For purposes of applying these limits, all defined contribution plans established by an employer are combined and treated as one defined contribution plan, and all defined benefit plans established by an employer are combined and treated as one defined benefit plan.

Also, if an individual is covered by both a defined contribution plan and a defined benefit plan established by his employer, then an overall limit is applied to coordinate the two limits discussed above. In this case, the sum of, first, the percentage utilization of the maximum limit under the defined benefit plan and, second, the percentage utilization of the maximum limit under the defined contribution plan cannot exceed 140 percent. For example, if both types of plans are used equally, the overall limit may be satisfied by using up to 70 percent of the limits applicable to each type of plan.

Because of the vital importance of maintaining the real value of retirement benefits, the bill instructs the Secretary or his delegate, through regulations, to make annual adjustments in the allowable limits to take account of increases in the cost of living. This includes adjustments in the $75,000 annual limit to benefits paid by defined benefit plans, the $25,000 limit to contributions under defined contribution plans, and, in the case of a participant who was separated from service with the firm, the amount of his average earnings in his highest compensated three consecutive years of service.

The bill provides adequate time for adjustment to the new limits on benefits and contributions under retirement plans. In general, these limits apply to contributions made or benefits accrued in years beginning

after December 31, 1975. However, to ease the transition to the new rules, an active participant in a defined benefit plan on October 2, 1973, will be permitted to receive an annual benefit which exceeds $75,000 a year based on his annual rate of compensation and the plan provisions in effect on that date, provided the benefit does not exceed 100 percent of his annual compensation on October 2, 1973. Where this "grandfather" treatment is utilized, the cost-of-living adjustments in the limits, which I have just described, are not available.

The conference bill provides a new, simplified method of taxing lump-sum distributions under qualified plans to replace the treatment provided under the 1969 act which has proved to be unadministrable.

Under the new provision, the portion of the distribution representing pre-1974 value receives capital gains treatment; the balance of the lump-sum distribution is taxed as ordinary income under a separate tax schedule—the tax schedule applicable to single people—generally without reductions, exclusions, or consideration of the taxpayer's other income. A special minimum distribution allowance is provided to insure that the tax paid by lower income individuals on their lump-sum distributions will generally not be more than under present law. Ten-year averaging relief is also provided for the portion of the lump-sum distribution which is taxed as ordinary income under the separate tax rate schedule income. This results in a tax payable at the time of the distribution, but no greater than the amount the taxpayer could expect to pay were the income to be spread over his remaining life expectancy.

As I indicated, the pre-1974 portion of the distribution is to receive capital gains treatment, while the balance of the distribution is to be subject to this special 10-year averaging rule. The present complex rules for determining how much of a distribution is under the old law and how much under the new law is to be replaced, in the bill, by a rule allocating on the basis of active participation in the plan. For example, if an employee was an active participant for 30 years altogether and 20 of those years were before 1974, then 20/30—which is two-thirds—of the distribution would receive capital gains treatment. In order to provide a rule that can be used quickly for employees who may have already left the plan during 1974 or who will leave before this year is out, it would be appropriate to take into account active participation this year and active participation in prior years as follows: active participation in 1974 would be in terms of months, with any part of a month treated as a full month; active participation before 1974 would be in terms of years, with any part of a year counting as a full year. I would hope that this rule, which might become the basis for the permanent regulations on this point, would enable employers to give the necessary tax information to those of their employees who leave active participation in the plan during 1974 and receive lump-sum distributions.

Finally, the conference bill adopts, with certain modifications, a House provision which suspends proposed Internal Revenue Service regulations in regard to so-called salary reduction plans in existence on June 27, 1974, to give the Congress an opportunity to study the matter further.

With this I will end my summary of the highlights of the pension bill. I could go on and give further details, but I do not want to take

more time for this, and, in any event, the details are described completely in the statement of the managers of the bill. What is important now is that we act promptly and pass this legislation so that it can begin its vital function of assisting our people to obtain meaningful and more secure pensions.

Mr. NELSEN. Mr. Speaker, will the gentleman yield?

Mr. ULLMAN. I yield to the gentleman from Minnesota.

Mr. NELSEN. I received a telegram this morning pleading a case of the private retirement funds that some companies had and the feeling that this conference committee report moved in a direction contrary to what was in either the House or the Senate bill. It was written in such a manner that they felt the security of their funds were interfered with. Does the gentleman have any comment on that?

Mr. ULLMAN. Yes. I am glad the gentleman raised the issue.

I spoke to it briefly in remarks earlier in the House today. This has to do with the matter of the integration of private pension programs with social security programs. It is section 1021(g) in the bill. I stated to the House earlier that we are correcting this matter. We are removing from the conference report that language with respect to which questions have been raised and on which many Members have received correspondence. We are dealing with this problem by offering a concurrent resolution immediately following the passage of this conference report that will correct some technical matters in the legislation, but that will also take from the bill this provision limiting integration between the social security system and private pension programs. I think it will completely satisfy the gentleman from Minnesota.

Mr. KAZEN. Mr. Speaker, will the gentleman yield?

Mr. ULLMAN. I yield to the gentleman from Texas.

Mr. KAZEN. Mr. Speaker, I understand the gentleman has said that section 1021(g) will be stricken from the conference report.

Mr. ULLMAN. The gentleman is correct. We are doing this by bringing up a concurrent resolution immediately following the passage of this conference report, which will take care of technical matters and strike section 1021(g) from the conference report.

I think that will satisfy the gentleman.

Mr. KAZEN. I thank the gentleman.

Mr. ULLMAN. Mr. Speaker, let me just say, that this legislation does establish a whole new set of minimum standards in the private pension field, but in doing so we have been diligent not to discourage the establishment of future pension programs. We want the private pension programs in this country to grow and to prosper, and we had to consider closely the problem that if we imposed regulations and requirements which were too severe, we might discourage the establishment of new private pension programs.

We believe we have dealt adequately with this problem. On the one hand we protected the people who are covered under this very fine system of private pension programs in a meaningful way, and this was done without putting the private pension program out of business.

Mr. Speaker, again I want to congratulate all those who participated in this long endeavor, and urge the Members to support the conference report.

Mr. BROYHILL of Virginia. Mr. Speaker, will the gentleman yield?

Mr. ULLMAN. I yield to the gentleman from Virginia.

(Mr. Broyhill of Virginia asked and was given permission to revise and extend his remarks.)

Mr. BROYHILL of Virginia. Mr. Speaker, I am glad to be able to support the conference agreement on the Employee Retirement Income Security Act of 1974.

As many have said here, this is one of the most far-reaching and important pieces of legislation that will be considered by Congress this session. It will have impact on the lives of the vast majority of Americans for years to come.

This bill, which was the product of many months of work by both the Committee on Education and Labor and the Ways and Means Committee provides significant new protections for workers presently covered by private pension plans and, in addition, extends for the first time the opportunity for those employees not covered by a pension plan to put aside some money for their retirement and obtain a tax deduction for the contribution made.

Mr. Speaker, others have gone into great detail on what the conferees agreed to, and I see no purpose in doing the same. However, I would like to discuss a few items which are important to both the Nation and to many of my constituents who have a stake in this bill.

First of all, it is important to note that this legislation increases the maximum amount the self-employed can put aside for their retirement. The so-called "Keogh Plans" which have greatly expanded the opportunity for self-employed individuals and their employees to provide for a pension in their retirement years are a fundamental part of our pension law.

Presently, the maximum limitations on deductions for self-employed individuals are 10 percent of income not to exceed $2,500. This legislation increases these maximums to 15 percent and $7,500 respectively. The same change is made as to exclude subchapter S corporation shareholder employees. In applying the percentage limitation, not more than $100,000 of earned income may be taken into account. Self-employed persons are permitted to set aside up to $750 a year out of earned income, without regard to the percentage limitation.

Additionally, the substitute authorizes Treasury regulations to allow self-employed persons and shareholder employees in effect to translate the 15 percent/$7,500 limitations on "contributions" into approximately equivalent limitations on benefits which individuals can receive under a defined benefit plan. I think both of these provisions are necessary and timely in light of the inflation we have experienced in the past few years and which we can conceivably experience in the future.

The need for increases in the limitations on Keogh plans was occasioned by the lack of limitations heretofore in existing law relative to corporate employees. Under present law, there are virtually no limitations on the amount that can be contributed to a plan by the corporation on behalf of its employees. The disparity between the $2,500 maximum and present law and the zero limitation on corporate employees has occasioned the widespread proliferation of the so-called professional corporations.

The conference bill makes an attempt to bring this disparity into prospective. As others have pointed out, we have provided a limita-

tion on the amount of deductible contributions which can be made in behalf of corporate employees and have increased the maximum deductible amounts available to the self-employed. This is an important step in the direction of tax equity between these groups, and I think it represents one of the most significant developments in the pension law which is contained in this legislation.

Mr. Speaker, during consideration of the pension legislation in the House a question arose as to whether the new standards for participation, vesting and funding should be applicable to Government plans generally and after a great deal of give and take on this matter, it was decided that the question of this coverage should be deferred until the committees knew more about the effect such an inclusion would have on existing governmental plans. I was concerned about this matter and felt that Government employees should at least be entitled to the same protections granted to those in the private sector, but reluctantly agreed it would be a mistake to take hasty action in this area. Accordingly, I supported the provision which provided for a study of this entire question by the House Committees, and as I indicated in my remarks in the House debate, I plan to take an active role in this study.

The bill before us also clarifies present law to provide that amounts contributed to a qualified plan in taxable years beginning after December 31, 1973, are to be treated as employee contributions if they are designated as such under the plan. As a result, should the committees of the Congress, for example, which are responsible for legislation governing the civil service retirement system redesignate the employee contributions, it is possible that the Federal employees would be able to obtain a tax deduction for their contributions to the civil service plan. At the present time, there is a pending law suit by certain Federal employees to effect this change, and the conferees felt that the pension legislation should take a neutral posture with respect to this suit. I was glad to be able to assure this result was obtained.

Finally, Mr. Speaker, I would like to discuss briefly a provision in the bill relating to so-called cafeteria plans. Essentially, these are plans which offer employees options relative to certain benefits so that they may pick and choose the ones which are most advantageous to them. For example, if a husband and wife are both working for separate employers, and each are offered a health insurance benefit, there would be no reason for both to take out a health policy. The result is that the health insurance benefit as a form of compensation is of no value to the one person and some companies have been moving in the direction of giving their employees the option to pick benefits which will be of value.

These so-called cafeteria plans contain a salary reduction element in the sense that there is the option on the part of the employee to choose a benefit and indications are that the Internal Revenue Service may apply its 1972 proposed salary reduction regulations to these arrangements.

In this legislation we have, in effect, grandfathered-in existing salary reduction plans until 1977 and have precluded the Treasury from issuing regulations on them prior to that time. The same kind of grandfathering is provided to cafeteria plans, and this is an important

development for the companies which have taken the innovative step in the compensation area by introducing the cafeteria plan approach.

In section XI of the Joint Explanatory Statement of the committee of conference on H.R. 2, it is stated that new participants may be added to an existing plan in the normal course of business. The intent of the conferees in making this statement is that the application of pre-1972 rules to existing plans will not be affected by the addition of new participants "in the normal course" and that pre-1972 rules will be applied to such new participants as well as those covered on June 27, 1974. Where employees of a company are already covered by an existing plan, its extension to additional groups of employees of the same company or its subsidiaries would be considered to be an addition of new participants in the normal course.

Mr. SCHNEEBELI. Mr. Speaker, I yield myself such time as I may consume.

(Mr. Schneebeli asked and was given permission to revise and extend his remarks.)

Mr. SCHNEEBELI. Mr. Speaker, I rise in support of the conference report on H.R. 2, the Employee Retirement Income Security Act of 1974. This legislation, which embodies a myriad of pension reform provisions, is the product of months of work by conferees representing four congressional committees and should prove to be one of the most important bills considered by this Congress.

The thrust of the legislation is to provide adequate protection for the pension benefits of workers who are presently under existing plans and to insure that those who will be covered in the future will obtain the same protections. The legislation agreed to by the conferees does this by mandating new Federal standards for participation, vesting and funding for existing and new plans and by establishing a program of plan termination insurance to protect those plan participants from loss of benefits when a plan is terminated. The standards for participation, vesting and funding approved by the conferees are essentially those which were contained in the House version and should provide the basis for easier administration of the new law.

The chairman outlined in detail the substance of the agreements reached by the conferees, and I shall not repeat them. However, I would like to touch on a number of areas included in the conference agreement.

First, I would like to discuss the difficult question the conferees had to face in resolving the issues of jurisdiction, administration, and enforcement of the new pension law. As Members will recall, the jurisdiction over pension provisions was split in the House between the Committee on Education and Labor and the Committee on Ways and Means. The House version of the bill provided dual standards and dual jurisdiction by both committees and there was a great deal of discussion during the House debate on how this would work. The Senate version, on the other hand, provided the essential elements of the pension reform legislation would be administered by the Internal Revenue Service with certain other areas being administered by the Department of Labor.

Under the conference agreement, procedures are provided which will allow a significant and appropriate role in the enforcement of partici-

pation, vesting, and funding standards to both the Department of Labor and the Internal Revenue Service with respect to plans which seek qualifications under the Internal Revenue Code. In addition, where areas of jurisdiction are delegated to one department or the other, the conference agreement provides general guidelines for coordination and administration of the enforcement.

Qualified plans are those which receive special tax benefits under the Internal Revenue Code and these in the past have always been administered by the Internal Revenue Service. On the other hand, plans which did not seek this special tax treatment have generally not been governed by Federal regulations and under the conference agreement, these are brought under the jurisdiction of the Department of Labor.

The conference agreement provides for the administration of qualified plans in two stages—the initial stage when the plan seeks special tax benefits under the Internal Revenue Code and secondly, the operational stage with respect to continued eligibility of the plan for special tax benefits. The agreement provides for special coordination between the Secretary of Labor and Secretary of the Treasury and should provide the basis for a solid administration of this new law.

The bill also provides that the plans heretofore described as nonqualified will also be required to meet the standards set down in the bill. These will generally be administered by the Secretary of Labor. There are those of us who have felt that this dual administration would be cumbersome and could be difficult for the general administration of pension plans. However, despite the fact that I would have preferred a single administrative scheme, I am convinced that the proposal for the dual administration agreed to by the conferees is the best that could have been worked out under the circumstances. I feel it is worth being tried in the next few years. Should the Congress find that it is not workable, we will have the responsibility to come back and make appropriate changes in the law to assure the effective administration of the new important standards which we have set forth in the legislation.

As I previously indicated, the conference agreement, like the House bill, provides new standards for participation, vesting and funding. Generally, under the agreement, new participation and coverage rules will extend to all plans, whether they be qualified or unqualified under the Internal Revenue Service regulations—except for government plans, church plans, a plan to comply with the workmen's unemployment disability or compensation laws, plans maintained outside the United States primarily for the benefit of nonresident aliens, employee welfare plans, certain supplementary plans, unfunded deferred compensation arrangements and the new individual retirement accounts. Generally, under both the labor law and tax law titles of the conference substitute, an employee cannot be excluded from the plan on account of age or service if he is at least 25 years of age and has had at least 1 year of service. There are certain exceptions to this rule but this is generally the provision which will apply.

Additionally, plans must meet one of three alternative rules relating to the vesting of benefits.

The first is the so-called graded vesting schedule under which an employee must be 25 percent vested at the end of 5 years, 50 percent

vested at the end of 10 years and 100 percent vested at the end of 15 years.

The second option is the 10-year, 100 percent vesting formula which allows full vesting after 10 years of service, but no vesting up until the 10th year.

The third option is the so-called rule of 45 under which an individual with 5 or more years of service would be 50 percent vested when the sum of his age and years of service equaled 45 with 10 percent additional vesting for each year thereafter.

The conferees agreed to a change in this last formula under which each employee with 10 years of covered service—regardless of his age—must be at least 50 percent vested and there must be provision for 10 percent additional vesting for each year of service thereafter.

The idea of having three separate vesting schedules is to allow employers and employees to choose one which most conforms with their particular situation and is designed to provide the kind of flexibility that the conferees felt was necessary in the establishment of new standards for pension plans. I support this concept and think it will prove to be one of the most important parts of this new legislation.

The legislation also provides new minimum funding standards which are designed to assure that individuals covered by pension plans will have something either when they retire or their plan is terminated.

The new funding requirements generally follow the House version of the bill which provided the unfunded past service liabilities were to be amortized over a 30-year period and experience gains and losses over a 15-year period. These new requirements should provide the kind of protection needed in this important area.

The conference agreement generally follows the House provisions relating to limitations on contributions to pension plans and profit-sharing arrangements. Under existing law, there are virtually no limits on the amount that can be contributed to these plans with the result that there is a substantial tax subsidy involved since the employer obtains a deduction for the contribution he makes to the plan. The House and Senate separately agreed that there should be some limitations on these amounts in an effort to bring the treatment afforded corporate employees more in line with that allowed the self-employed.

The changes made would allow the self-employed to deduct the lesser of 15 percent of income or $7,500 and would limit the contributions under corporate defined benefit plans. These contributions would be restricted to an amount which would fund an annual benefit not to exceed the lesser of $75,000 or 100 percent of the participants average compensation in his high 3 years of employment. Under the agreement, both of these ceilings are to be adjusted to reflect cost-of-living increases. In the case of defined contribution plans, the bill limits the amount to the lesser of $25,000 or 25 percent of the participant's compensation from the employer. The effect of these limitations is to assure greater equity among different groups of employees as well as to provide what most consider to be adequate pension and profit-sharing levels for high-paid executives. It is generally felt that these limits are rational in terms of the present pension and profit-sharing situations around the country.

Additionally, the legislation provides for the first time a significant

new program for so-called pensionless employees. These are individuals who work for organizations which do not have any pension program. Since they are not self-employed, they cannot qualify for the Keogh plans. The provision in the bill, which was recommended by the administration, would allow an employee to contribute 15 percent of his compensation with a maximum of $1,500 per year to an individual retirement account and receive a tax deduction for it. The purpose of this new provision is to encourage that half of the working population not now covered by any pension plan to obtain some tax benefits and begin a program to provide funds for retirement. It should be the basis for significant expansion of the private pension system, and it is certainly one of the most important features of this new pension bill.

The legislation also provides new and simpler rules for the tax treatment of lump-sum distributions and clarifies the existing rules relative to salary reduction and cash or deferred profit-sharing plans. These latter pension plans have been held under a cloud of mystery in light of certain 1972 regulations issued by the Internal Revenue Service.

During my remarks on February 26, when the House was considering H.R. 2, I noted that the legislation was extremely comprehensive and complex and that it would have a pervasive effect on private economic security measures. I also noted that in view of the magnitude of this legislation, legislative oversight would be required and changes would be in order as we gained experience in dealing with the new standards and regulations in the bill.

The conferees have provided a mechanism for detailed study of certain provisions that they felt were in need of further examination and for general oversight. This will be accomplished by the establishment of a joint task force made up of the staff of the Committee on Ways and Means and the Committee on Education and Labor as well as the Senate committees involved. This joint task force has been assigned a number of areas to study immediately and will be reporting back to Congress as these studies are completed. However, I think it is important to note that the conferees recognized the need for continuing review of this important area and provided the mechanism to assure it.

While I do not agree with every provision agreed to by the conferees and can see certain trouble spots along the way, I can say that on balance this is a fine bill reflecting the best efforts of a great number of people and should provide the basis for greater protection for employees' pension rights in the future, as well as affording the opportunity for those not presently covered to obtain meaningful pensions even if their employers do not establish a pension plan. For these reasons, I support the conference agreement and urge my colleagues to vote for it.

Mr. BROTZMAN. Mr. Speaker, will the gentleman yield?

Mr. SCHNEEBELI. I yield to the gentleman from Colorado.

(Mr. Brotzman asked and was given permission to revise and extend his remarks.)

Mr. BROTZMAN. Mr. Speaker, I rise in support of the Employee Retirement Income Security Act of 1974. I commend the conferees for the responsible manner in which they addressed the major problems as-

sociated with the present pension system. We, in turn, owe it to the 30 million employees who are currently covered by private retirement plans and the 53 percent of the work force who are not covered to pass this legislation and reverse the inequities that have worked to discourage self-reliance, prudence, and independence.

In the course of my work as the Representative of Colorado's Second Congressional District, I have been impressed with the number of persons who would like to provide for their retirement years through their own devices. All too often they are unable to do so. While their salaries enable them to live in relative comfort, they simply lack the resources necessary to save for the future. More often than not their inability to save can be traced to the fact that their taxes—including income taxes, sales taxes, and property taxes—represent the single largest claim on their paychecks.

As a consequence, Mr. Speaker, I set pension reform as one of my personal priorities and without hesitation, I can say that the bill before us is the realization of this goal. To my mind, there is five important principles which need to be included in sound pension reform legislation. Each is addressed by this bill.

First, an income tax deduction must by provided for those who wish to save independently for their retirement. Second, the tax deduction for self-employed persons who provide for their own and their employees' retirement has to be liberalized to better conform to today's financial realities. Third, vesting standards have to be secured for those employees who face the risk of losing their pension rights when they change or lose their job. Fourth, the law must be flexible enough to allow a pension plan to provide for a "cash out" whereby an employee's accrued benefits can be put into a qualified retirement savings program, without paying tax either on the distribution or on earnings from it, until he draws benefits upon retirement. Finally, minimum financing standards must be established to increase the security of pensions.

Under the conference substitute, the maximum annual deduction for an independent retirement account is to be $1,500 or 15 percent of compensation. A wide variety of investment possibilities would be allowed the taxpayer who chooses to establish such a fund for himself, and standards for the distribution of the fund are established to prevent misuse of IRA accounts. At last, 25 million men and women who are not covered by a pension will be able to receive a share of the tax benefits long accorded those who are protected by employer financed plans.

Similiarly, the self-employed or those who do business other than as a corporation can better insure their futures and those of their employees because this legislation increases the maximum deductible contribution to the lesser of 15 percent of earned income or $7,500. Not only will this help the small businessman who is floundering in a riptide of inflation, but it will retard the proliferation of firms converting to corporate status chiefly for this tax purpose.

To secure pension rights, that are really deferred compensation, this bill provides three alternative vesting formulas that can be incorporated into a qualified pension plan. This insures flexibility for the

employer, but, most important, it preserves for those 30 million Americans who are now covered by private pension plans the interests accrued through the years. While not required of any plan, pension portability is sanctioned by this legislation. Thus, an employer can add another dimension to his pension plan and the employee can transfer his entitlement without tax loss.

So that employees expecting retirement benefits under their firm's plan will have the security of knowing that their vested benefits are being adequately funded, H.R. 2 establishes new funding standards. The minimal amount an employer is to contribute annually to a defined benefit pension plan includes the normal costs of the plan plus amortization of past service liabilities, experience losses, and so on. Again, to aid the financially marginal business, the bill establishes a procedure for waiving minimum funding requirements and stretching out the amortization timetable. Business failure, after all, ultimately works to the detriment of the pensioner.

I believe, Mr. Speaker, that the Employee Retirement Income Security Act of 1974 is a reflection of this institution's finest quality—the ability to transform differences of opinion into workable laws. If enacted, it will brighten the futures of millions of Americans.

Mr. SCHNEEBELI. Mr. Speaker, I yield 5 minutes to the gentleman from Texas, (Mr. Collins).

(Mr. Collins of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Speaker, the Conference Pension report represents many good features. It is a comprehensive and equitable bill. Bankers, insurance agents, lawyers, all approved the bill. But there is one underlying weakness that is still there. The Government and Congress should not enter into the private field of pensions.

Why is the Labor Department the managing bureaucracy in this operation? With most management groups, the Labor Department is about as welcome as a plague of locusts. The easy answer to avoid this is for a small company to simply not have a pension plan. Thereby all the forms and paperwork for the Government reports can be eliminated if you do not have a plan.

My big objection is the entry to Government through its blanket insurance which will, in turn, lead to control of private pension plans. I was impressed and believe 100 percent in President Ford's statement last week to the Joint Session of Congress. I may miss an exact quote, but as I recall, he said—

> A government that is big enough to give you all you want is a government big enough to take from you all you have.

Our Government record in managing pension plans is a dismal failure. We vote benefits in every election year but do not vote the income and reserves to pay the pension. Look at Government's record—every plan a financial, insolvent deficiency.

Last week the Commerce Committee discussed and passed out the railroad retirement bill. This bill calls for general revenue to pay out a plan that is broke and has suffered from Government mismanagement. The past 5 years Congress increased railroad pension benefits by 68.5 percent with no increase in income to offset it. We moved the retirement age back from 65 to 60. Total funds paid over the years by

annuitants will cover about 3 years payments from a person with an average pension expectancy of 16 years at age 60.

Let us review social security, which is our basic Government pension plan. A few years ago we had 18 years reserves to back the plan, but today we are on the thin ice of 8 months. Social Security Administration is well run and capably managed, and we are all proud of this efficient organization. Their problem is the Government legislation turned out by Congress. Social security schedules are based on political expediency and not sound finance.

Let us look at the Government system of pensions for our military. There was nothing paid in for many years. Now inadequate contributions are not sufficient. How can you provide for a pension to pay over half a man's salary after he has served 20 years? A young man retiring at 41 can draw a pension for 35 to 45 years. Every Congress must fund this deficiency.

Let me get a few facts straight. This plan does not provide portability. The mistaken impression that you can carry full benefits from one company is impossible. Each private plan is different so the individual who changes jobs must continue to start over with some adjustment.

Another limitation to a small company is the right of the Labor Department to review a company's complete financial books. They may request reports, data, and a full audit once a year, which is expensive to a small fund. No small business wants the Labor Department checking all expenses, loans, cash positions and profit margins which is a burden.

The strong appeal in this pension bill is the vesting. This is great for folks under 40, but is a loser to employees over 40. To have tax deductible status, present pension plans must retain all unused reserves in the plan when an employee leaves the company. These reserves make possible a larger pension for the older employees when they retire. Now these distributed funds will not be available for the long-time workers, who are the ones most concerned with a pension.

The big issue is the insurance and control feature by the Government. Private pension plans have a 99-percent record of successful administration. Compare this to the Government's record of zero percent with total failures in financial management of Government-controlled pension plans. Let us not let the Government gradually absorb the $170 billion of private fund assets.

Private pension plans should continue to be private, and to this concept of taking in the Government as a partner, I vote "No."

Let us remember—a Government that is big enough to give you all you want—is a Government big enough to take from you all you have.

Mr. ULLMAN. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I think we should point out that in the delicate area of jurisdiction between IRS and the Labor Department we have striven to avoid all duplication. I think we have been extremely successful. We worked out a formula whereby we have divided the responsibilities and eliminated for all practical purposes all areas of double jurisdiction.

Mr. CLANCY. Mr. Speaker, today we are considering the conference report on H.R. 2, the pension reform bill. The long story behind this legislation began last April when the Senate Labor Committee re-

ported S. 4, and ended on the Senate side with its version of pension reform, H.R. 4200. The House version of H.R. 2 resulted from the combination and the coordination of the efforts of the Education and Labor Committee and the Ways and Means Committee.

This legislation is indeed timely in this period of "stagflation" and basic job insecurity. Because H.R. 2 deals with both qualified and nonqualified plans, H.R. 10, Keogh, plans and individual retirement accounts, provision is made for the retirement needs of many millions of individuals. It is necessary to assure that individuals who have productively spent their careers will have adequate incomes to meet their retirement needs.

Under present law, the key has been reliance on voluntary actions by employers to provide adequate pension and welfare plans for their employees, and for the self-employed and low income wage earners to rely on less than adequate methods to insure against their retirement needs. In many cases the result, in the absence of comprehensive legislation, has been loss of benefits under unduly restricted forfeiture provisions, outright failures of pension plans and inequitable tax treatment.

This legislation, I believe, is a step in the right direction. The wider coverage, vesting and funding provisions of H.R. 2 will assure a measure of soundness and stability to pension plans to pay promised benefits at the time they are most needed. The protection of employee benefit rights provided by H.R. 2, while it cannot be said to be a panacea for all the problems in the pension area, is a significant and comprehensive improvement in assuring and protecting the continued well-being and security of America's work force.

Mr. BRADEMAS. Mr. Speaker, I rise in support of the conference report on H.R. 2, the Employee Retirement Income Security Act of 1974.

Mr. Speaker, this is one of the most important laws ever passed by Congress to protect the rights of American working men and women. And my colleagues on the Committees on Education and Labor and Ways and Means who labored long and hard on this legislation should be congratulated for their great energy and perseverance in reaching agreement on this landmark measure.

As a member of the Education and Labor Committee, and as one of the cosponsors of this legislation, I know how complex this measure is and how difficult it has been to write comprehensive pension-reform legislation.

Mr. Speaker, I want to pay a word of special tribute to the distinguished chairman of the general Subcommittee on Labor, the Honorable John Dent, for his outstanding leadership on this legislation.

Mr. Speaker, this bill establishes certain minimum standards to protect the retirement benefits of the more than 30 million people who are covered by private pension funds.

Although private pension systems have served the needs of many workers, they have failed countless others. The promise of pension benefits upon retirement has been an illusion for too many working men and women.

Mr. Speaker, H.R. 2 would help meet these problems by establishing standards to protect these private retirement benefits. This measure

includes minimum standards for coverage and participation of plan participants; fiduciary and disclosure standards to guard against fraud and abuse of pension funds; vesting standards to guarantee that a worker would have a vested right to at least a portion of his pension after working one job for a few years; and minimum standards of funding of pension plans to assure that pension assets will be able to meet existing claims.

Mr. Speaker, the bill is of special interest to me because of the Studebaker shutdown in South Bend in 1963 in which thousands of workers who lost their jobs received only a fraction of the pension benefits they had earned during a lifetime of work. Indeed, some workers received no pension at all.

Although the Studebaker plan was a liberal one, which called for the systematic funding of liabilities when the plan terminated, there were not enough assets available to pay all claims.

As a result of the Studebaker shutdown, workers with as much as 40 years of seniority were left with nothing and were far too old to start receiving new pension credits from another company.

Mr. Speaker, although the Studebaker closing is perhaps the most dramatic example of the effect of pension plan failure, it is by no means unique.

A joint study of the Departments of Labor and Treasury released last year indicated that during 1972 more than 15,000 pension plan participants lost retirement benefits because their pension plans were terminated without sufficient assets to meet all plan obligations. These losses amounted to more than $210 million in anticipated retirement incomes and several thousand of these victims of pension plan terminations actually lost their entire earned pensions.

Mr. Speaker, this legislation would help meet the problem of involuntary plan termination, underscored by the Studebaker shutdown, by providing an insurance plan which guarantees payment of vested benefits if a pension fund terminates without sufficient assets to meet its obligations.

Mr. Speaker, over a decade ago the collapse of Studebaker and its pension fund taught us a painful lesson. If pension insurance had been available then, thousands of pensions would have been saved. Enactment of this comprehensive pension reform legislation which includes plan termination insurance is long overdue and I urge my colleagues to give H.R. 2 their full support.

Mr. Badillo. Mr. Speaker, the Employment Retirement Income Security Act is a long overdue measure aimed at insuring that millions of American workers currently covered by private pension plans will actually benefit from a pension when they choose to retire. By establishing certain uniform standards and a termination insurance system, H.R. 2 will enable many men and women to retire with a reasonable degree of economic security and peace of mind. However, this legislation must not be considered the final word in pension reform as a number of more substantive reforms still require action.

I continue to be deeply troubled that this bill contains no mention of portability and believe this is an oversight which must be corrected as quickly as possible. While there are three vesting plans incorporated in this legislation, a worker must have the right and ability to

move to some other type of employment in some other area if he or she so chooses and cannot continue to be tied to one job.

In this period of high unemployment it seems particularly important that a worker be afforded the right to transfer his pension rights should he be required to change jobs because of necessity or to seek advancement. The American labor force has traditionally been a highly mobile one and a worker's retirement security must be effectively protected.

I am not disappointed that the conferees failed to include the portability language incorporated in the measure passed by the Senate. Although a portability program was purely voluntary, it at least encouraged its establishment in an effort to furnish the maximum possible protection for workers. The voluntary portability system envisioned in the Williams-Javits bill and which I unsuccessfully attempted to offer to the House bill would have enabled companies to permit their employees to carry their vested rights from one firm to another when changing jobs. I am fearful that vesting without portability may prove inadequate in certain instances.

American workers do not typically remain with one employer during a lifetime, Mr. Speaker. As a consequence there is a definite need for pension credit accumulation for employees as they move from one job to another in an economy in which both individual and corporate mobility is increasing.

I am hopeful, therefore, that the issue of portability will be given first priority as the momentum for more comprehensive pension reform continues. However, the initial steps must be taken this afternoon by adopting the conference report before us and seeing to it that the reforms this legislation proposes are fully and accurately implemented.

Mr. GAYDOS. Mr. Speaker, I wish to commend the conferees of both Houses of Congress for their diligent efforts in reaching an agreement on legislation which will protect and preserve the pension benefits of the American working man.

Specifically, I wish to commend my colleagues, Mr. Perkins, Mr. Thompson, Mr. Dent, Mr. Burton, Mr. Quie, Mr. Erlenborn, and Mr. Sarasin for their efforts in incorporating in the conference report provisions which this House so overwhelmingly approved on February 28 of this year.

It is obvious that this legislation is most complex, and I will only point out some of the most significant provisions.

PARTICIPATING AND VESTING

The conference report adopts the House provision in that no plan may require as a condition of eligibility an age greater than 25 or employment service in excess of 11 years. Where plans provide for 100-percent immediate vesting, this would have to occur no later than after 3 years service. The conference report does add a new provision which provides for a so-called "look-back" of up to 3 years for an employee who begins employment prior to age 24. Thus, an individual who is employed at age 20 will, upon attaining age 25, have a vested credit of 3 years.

The conference report provides for the three vesting rules which were embodied in the House bill. These are: First, 10 years service

rule, with 100-percent vesting after 10 years of service; second, graded 15-year rule with 25 percent vested after 5 years of service, and 100 percent vested after 15 years; and third, the rule of 45, which provides for 50-percent vesting when age of individual plus years of service equal 45.

The conference report does add a new provision which requires under the rule of 45 that an individual with 10 years of service will have 50-percent vested benefits regardless of his age. This means that an individual, aged 30, who commenced employment at age 20 and had 10 years of service would, under the rule of 45, otherwise not obtain any vested benefits, since his age, plus service of 10 years, equals 40. The conference report, however, will now provide the individual with a vested benefit, at age 40, as 10 years of service.

As provided in the House bill, a plan would be allowed to change its vesting provisions provided that the vested benefits would not be reduced or delayed for the plan participants at the time of the change. As in the House bill, any plan would be allowed to provide for vesting of benefits after a lesser period of time or in a greater amount than was set forth in the law.

FUNDING

The conference report emphasizes the provisions of the House requiring all plans subject to the act to make annual contributions equal to the normal operating costs plus an annual amortization of the unfunded accrued liability over a period of 30 years for a single employer plan or 40 years for a multiemployer plan.

TERMINATION INSURANCE

The conference report, with some minor changes, adopts the House provisions which provide for the creation of a Pension Benefit Guaranty Corporation, whose purpose is to guarantee payments of benefits to participants in the event of termination of the pension plan. There are three new provisions in the conference report, however, which are of interest:

First. An advisory committee will be created consisting of two representatives of labor, two representatives of management, and three representatives of the general public, to be appointed by the President and confirmed by the Senate, whose purpose will be to advise the Pension Benefit Guaranty Corporation on policies and procedures to be followed with respect to terminated pension plans.

Second. The House bill would authorize the Corporation to insure employers against a contingent liability that could arise if, upon termination of a pension plan, it was necessary for the Pension Benefit Guaranty Corporation to make payment to the pension plan in order to insure that the participants receive the benefits to which they are entitled. The conference report provides for mandatory coverage of contingent employers liability for both single and multiemployer plans.

Third. The conference substitute authorizes the Pension Benefit Guaranty Corporation to attempt to develop within a 3-year period a system whereby insurance against contingent liability can be, in whole or in part, provided by private insurers.

EFFECTIVE DATES

First. The reporting and disclosure provisions will generally become applicable January 1, 1975.

Second. The provisions on participation and vesting will become effective for plans in existence as of January 1, 1974, for the plan year commencing after December 31, 1975. With respect to new plans, they will be subject to requirements for the plan year commencing after the date of enactment of the bill.

The conference report does contain a new provision that pension plans which are collectively bargained, the collective bargaining agreement may be reopened solely for the purpose of allowing the pension plan to comply with the requirements. Otherwise, the pension plan would not be subject to participation and vesting requirements until the expiration of the current collective bargaining agreement.

Third. Funding. New plans will be subject to funding provisions in the first plan year beginning after the date of enactment of the legislation. For existing plans, they will be subject to the provisions on December 31, 1975, except that existing collectively-bargained plans would be subject to the provisions upon expiration of the existing collective bargaining agreement or, at the latest, December 31, 1980.

Fourth. Termination insurance. For single-employer plans, termination insurance coverage would be effective July 1, 1974, with premium payments to commence on the date of enactment of the legislation.

For multiemployer plans, coverage to commence January 1, 1978 with employer liability commencing on the date of legislative enactment.

Fifth. Fiduciary responsibility. The fiduciary liability provisions of the act would become effective January 1, 1975.

Mr. Speaker, this legislation represents a giant step forward in protecting the pension rights of American workers. I strongly urge the adoption of the conference report.

Mr. MINISH. Mr. Speaker, I rise in strong support of the Employee Pension Security Act of 1974, the so-called pension reform bill.

This legislation has been long overdue and is much needed. I want to commend the conferees on both sides for producing a quality conference report which represents a giant step forward toward reforming the terrible mess that now permeates private pensions in the United States.

Private pension plans have experienced tremendous growth over the last decades to the point where they now affect 30 million Americans—it is time for the Federal Government to step in and assure that these employees and others receive their just due.

For too long people have been denied pension security because they change their jobs, their workplaces are shut down, the companies they work for are sold, declare bankruptcy, or move to another area.

The legislation before us today, which will be cleared for the President's signature in the near future will go a long way toward alleviating present roadblocks to a secure and a meaningful retirement.

In summary, the bill would assure the pension coverage of most private enterprise employees while at the same time protecting their

eventual benefits. Additionally, the various private pension plans will be required to show proper funding, and the bill authorizes a Federal run employer-financed insurance program to guard against failing plans.

I am disappointed that the legislation's final version does not require the strong mandatory portability features that were in my original bill. However, it should be noted that the measure does call for a limited form of voluntary portability which will be of immense benefit if employees and employers work together to make it effective. In addition the legislation calls for further congressional work on the portability issue during the 94th Congress.

All too often in the past private pension plans were a sham—they did not deliver what they promised. Employees in our country have waited a long time for effective reform in this area. It is high time that some order, stability, and reliability were introduced into this virtually unregulated sector of our economy. I urge an overwhelming vote of approval for H.R. 2.

Mrs. GRASSO. Mr. Speaker, after years of toil and effort, the House is finally ready to approve a pension reform bill which will truly protect the rights of the American worker.

I would like to take this opportunity to express, on behalf of the workers in my district, my thanks to my colleague and friend, the gentleman from Pennsylvania (Mr. Dent), for his tireless efforts on behalf of this legislation.

The final provisions of H.R. 2 will directly affect as many as 35 million workers and additional millions and their families. For the first time, they will be assured by the law that pensions promised to them will be delivered on their retirement.

By establishing minimum vesting, funding, and fiduciary standards, the bill will protect private pension plans and will prevent a recurrence of the too-often repeated story of pensions which unexpectedly vanished when workers reached retirement age.

Without question, H.R. 2 represents the most important piece of labor-related legislation since the establishment of the Federal minimum wage nearly 40 years ago. I wholeheartedly support the conference report and would hope that it could be quickly signed into law.

Mr. ANNUNZIO. Mr. Speaker, I rise in strong support of this monumental and most significant reform legislation, because of the first time in our nation's history, a comprehensive Federal statute governing private pension plans is being enacted. For the first time, working Americans who in good faith pay a part of their salaries into company pension plans, will be guaranteed, upon retirement, receipt of the benefits for which they worked so hard.

The case for pension plan reform was made known by the thousands of workers who voiced their legitimate grievances to us, who told their stories before House and Senate hearings, and even on TV the people spoke, and we listened.

The pension reform bill will assure that those workers under private pension plans will get the benefits to which they are entitled—even if a company for which they worked goes out of business. I feel that the pension plan termination insurance program is the real backbone of the legislation. It will be the spine of the private pension system

since it will assure workers that if they are entitled to a pension, they will get one.

As I have said in the past, in speaking for the inclusion of a termination insurance program, such a program would eliminate the legitimate fears shared by thousands of workers that the pension on which they so desperately depended would not pay off at retirement. No longer will actual losses be experienced by thousands of workers each year who have found that their pension plan was terminated without sufficient assets to pay all benefits due.

This legislation recognizes that despite the favorable tax treatment afforded pension plans and the enormous growth over the years, too many employees with long years of service were losing anticipated retirement benefits owing to the lack of vesting provisions in these plans. Mr. Speaker, H.R. 2 provides minimum standards of vesting from which plans can choose. Similarly, it provides rules concerning eligibility, participation requirements, plan termination insurance, reporting and disclosure, fiduciary responsibilities, individual retirement accounts, and survivors' benefit options.

Mr. Speaker, this legislation also recognizes that the soundness and stability of many pension plans were endangered because of inadequate funding requirements. The minimal funding requirements prescribed by the Internal Revenue Service did very little to contribute to the financial integrity of pension plans. It is therefore reassuring that this complex piece of legislation calls for the systematic funding of pension plan liabilities.

The present tax laws generally are aimed at preventing employers from operating plans as tax avoidance devices. They also prohibit employers from running plans that discriminate in favor of officers, stockholders, and highly paid employees. But the tax laws do nothing more than this. Yet the Treasury Department was estimating that we were losing something like $4 billion a year in lost revenues from private plans taking tax deductions for contributions to pension trusts, with the income then earned by the trusts being tax exempt.

I am proud of the provisions regarding participation, vesting, funding, and also the other major tax and reporting provisions in the bill. I would like to call particular attention to some of the lesser known details which I think will definitely be appreciated by our working men and women.

First of all, when an individual leaves a pension plan prior to retirement—with a vested right to a pension—the employer will not only be required to furnish him with a statement setting forth what the employee is entitled to, but he would also be required to forward a copy to the Social Security Administration. When the individual applies for social security benefits, he will be notified what he is due under the pension plan which covered him perhaps 5, 10, or even 20 years ago. Often workers forget these things over the years and never apply for benefits which are rightfully theirs.

Another feature that I think is important and which I would like to point out to my colleagues is that workers who leave plans with vested rights to their pension can expect the full amount promised at retirement under plans which integrate their benefit formulas with social security. Under offset plans, an employer could formerly reduce

the amount that he would pay under his pension plan to reflect increases in social security benefits enacted after the individual left his company. Now the offset under integrated plans will be frozen at the level in effect when the individual terminated employment.

I should also add that this legislation codifies the current administrative practice of the Internal Revenue Service which freezes the amount of the offset for individuals once they are retired.

These are just two features I would like to point out. Of course, I could go on and on discussing the numerous provisions in this lengthy bill, but suffice it to say that this was one of the most complex pieces of legislation that any of us has had to face and I think the conferees did a commendable job. Once the conference report before us is enacted into law and the program gets underway, it will be necessary for us to monitor the effectiveness of the law in order to eliminate any weaknesses that might exist and in order to strengthen it and make sure that the intent of Congress is fully implemented.

Mr. RAILSBACK. Mr. Speaker, today is certainly a day we have all been looking forward to. But I must say that the people who have been looking forward to it with the greatest anticipation are the millions of working men and women who will be helped by the pension reform legislation before us this afternoon. Estimates of the number of people who will be covered by H.R. 2 are as high as 30 million.

The legislation will establish minimum standards which pension plans must meet. I believe that the standards are fair from the standpoint of participants and employers, unions and management. The conferees have carefully considered both the House and Senate versions of the legislation and have worked expeditiously in bringing this measure to the floor. I would like to take just a moment to commend them for this most difficult task. The legislation is inordinately complex and technical, and my only caution and concern is that adequate explanations of the bill be provided to all concerned.

Basically, H.R. 2 will require that all employees be eligible to participate in a pension plan after they are 25 years old and have worked for an employer for 1 year. This provision recognizes that younger workers change jobs more frequently than older workers before settling down into a career occupation. It also takes into consideration the fact that other individuals are transient or temporary workers, and have no intention of staying with one employer for any length of time. The legislation does not saddle employers with keeping records for these individuals which would not only be costly and time consuming, but also to little avail.

The bill also establishes what I believe are responsible and flexible standards for vesting. Three options are available which will permit employers some choice in the vesting formula they wish to adopt. I should add that the vesting cost studies that were completed last year showed a nominal difference in costs among the different options studied.

I am also pleased that the bill includes sound requirements for the funding of pension plans. The systematic funding of pension plan liabilities in the manner called for in H.R. 2 should contribute significantly to the financial integrity of pension plans. This, coupled with

tighter standards of fiduciary conduct, should add employee confidence in the private pension system.

One provision which I am truly encouraged by is that regarding the pension plan termination insurance program. I carefully studied the arguments for and against such a program, and concluded that we have a fairly serious problem that can be solved with the sharing of risk among all plans.

H.R. 2 also serves to remedy an obvious inequity that has existed for years in the tax treatment afforded pension plans set up by the self-employed. Whereas formerly there was no limitation on corporate contributions to pension plans, the self-employed were limited to a maximum deduction of $2,500 a year. Now they will be entitled to up to $7,500 a year. This will hopefully stem the tide of professionals seeking to incorporate because of the differences in tax treatment of pension plans.

Mr. Speaker, we have all sought ways to preserve and stimulate the future growth of the private pension system. In fact, we were very careful in avoiding the inclusion of provsions which would stifle that growth. Toward this end the legislation was carefully shaped. But what could be done to encourage and stimulate the growth of the private pension system?

Mr. Speaker, the inclusion of the so-called IRA provisions permitting individuals not covered by a pension plan to set up a tax-qualified plan of their own will be a catalyst in stimulating the growth of the private pension system. Now individuals not covered by a pension can take, depending on their income, a tax deduction of up to $1,500 a year for retirement savings. This is a provision similar to that I have been calling for in bills I have introduced over the last several years. Therefore, I am particularly pleased this language is included in H.R. 2.

To conclude, I believe the Pension Reform Act comes to grips with many of the serious problems facing far too many Americans regarding pension plans. I urge immediate enactment of H.R. 2—it is a good pension reform bill, and we must usher in an era of pension reform yet this year.

Mr. PRICE of Illinois. Mr. Speaker, I would just like to add my comments to those that have already been made in support of the adoption of the conference report on H.R. 2, the Employee Benefit Security Act of 1974.

This legislation was introduced in response to growing complaints that many pension plans are inadequate and deprived of retirement benefits if they change jobs, their plans are insufficiently financed, or the company folds. These people need to be protected better than they are now, and this legislation I feel will do an admirable job of alleviating the harsh conditions that now exist. Potentially affecting 30 million citizens, this bill is one of the most important bills this Congress will consider.

I urge my colleagues to adopt these provisions so that vesting and portability standards may be put into effect as soon as possible. The workers of America need this legislation so that they may be assured of receiving the benefits for which they worked so hard.

Mr. TIERNAN. Mr. Speaker, today is the culmination of several years of effort to reform the private pension system. Our vote in favor of the

conference report to H.R. 2, the Employee Retirement Income Security Act of 1974 will assure millions of workers adequate income for their retirement years.

The private pension system in the United States has grown at a phenomenal rate in the past 30 years. In 1940, only 4 million employees were covered by private pension plans. Today, over 30 million employees or almost one-half of the private nonfarm work force are covered by these plans. Over $150 billion in assets are held in reserve to pay benefits credited to private plan participants. But even with this huge amount in reserve, employees often retire only to find out that for some reason they are denied the pension they earned. Either the company has unknown rules for pension eligibility or runs into financial difficulty and there are no funds left to pay pension benefits. Despite this rapid growth of the pension system, there are no Government regulations to correct the flaws.

Both the Senate and the House have put in long hours working to reform the pension system, to strengthen the position of the retiree without discouraging the growth of private pension plans. The bill we are voting on today was a monumental task, but it was completed successfully. This bill will establish minimum standards of vesting, funding, and fiduciary responsibility. It will also provide insurance for the vested portion of unfunded liabilities against the risk of premature plan termination. This insurance will protect employees from the bankruptcy of their employer.

Another important provision of this bill is the tax deduction allowance for those not covered by pension plans. While 30 million employees are covered under pension plans, still half of our work force does not have the benefit of these plans. But the bill we are voting on today will allow these individuals to set up their own retirement accounts and deduct up to $1,500 from their income tax returns.

This bill will protect the employee's pension rights from bankruptcy of the employer; it will require the employer to clearly state the eligibility standards for pension participation; it will set up vesting and funding standards; and it will help those not covered under a pension plan by providing a tax reduction for retirement savings. This is one of the most monumental pieces of labor legislation passed by any Congress and the long years of work on this bill were well worth the effort.

Mr. COLLIER. Mr. Speaker, I rise in support of the conference report on H.R. 2, the Employee Retirement Income Security Act of 1974.

As a conferee on this important legislation, I can tell the Members that this is one of the most comprehensive bills I have ever worked on and feel it will provide the basis for improved pension benefits for virtually all Americans who are now covered by a plan, may be covered in the future, or will be able to take advantage of the newly established individual retirement accounts.

As many of the conferees have indicated this legislation provides new standards relating to participation, vesting, and funding of pension plans, establishes a new program of individual retirement accounts for those pensionless employees who do not have coverage under an existing plan and provides a large number of other changes in both the tax and labor laws relating to this entire subject. Others have dealt with some of the items contained in this legislation, and I

would like to merely touch on a few items which I think are critical and deserve explanation.

As I indicated, the conference agreement provides three alternative vesting standards which must be met by either plans which qualify under the tax law or those that will be required to meet the guidelines established by the Secretary of Labor. The existing Internal Revenue Code provides rules against discrimination on the part of pension plans between employees. Simply stated, a particular plan must not favor supervisory employees over nonsupervisory employees in its vesting provisions and other provisions if it is to qualify for the special tax treatment afforded by the Internal Revenue Code for qualified plans.

Generally speaking, the Internal Revenue Service has forced on small employers faster rules of vesting than it has on the larger plans since there may be more likelihood of turnover and greater benefits to highly paid workers in those plans than in the larger companywide plans. Unfortunately, the law has not been administered on a uniform basis, and the conferees were made aware of a number of situations where small employers, who were attempting to provide their employees with a meaningful pension plan, have had to vest and fund their plans at levels significantly in excess of those required of major corporations.

The conferees attacked this problem by providing in general that a plan which meets the vesting requirements provided in the bill is not to be considered discriminatory unless there is a pattern of abuse under the plan or there has been or is reason to believe that there will be an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders or highly compensated. It seems to me that once a plan meets the standards established in this bill there should be no greater requirement for it, and the Internal Revenue Service should not be allowed on a general basis to require faster vesting of the small employer than it would a large corporate employer.

The provisions in this bill provide, except in cases where actual abuse occurs, the Internal Revenue Service in administering the vesting provisions will not require a vesting schedule more stringent than 40 percent vesting after 4 years of employment with 5 percent additional vesting for each of the next 2 years and 10 percent additional vesting for each of the following 5 years.

Additionally, this more rapid vesting would generally not be required except in a case where the rate of likely turnover for executives was substantially less than the rate of likely turnover for rank and file employees.

As a conferee, who proposed this last alternative, I wish to make it clear that my intentions are to make uniform the rules under which the Internal Revenue Service operates in those instances where there is a definite pattern of abuse. I hope and intend that these rules will not be applied in cases where there is only a slight question and the circumstances preclude absolute nondiscrimination. The thrust of this pension legislation should be to protect employees and to insure that they have adequate benefits. It should not be implemented in a way

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which will force employers to end their plans or perhaps discourage other employers from beginning them.

The conferees provided that the joint pension task force is to study this problem carefully. I hope the group will move on this very important question quickly.

Mr. Speaker, there is one other important item I would like to discuss. It relates to the establishment in this legislation of the tax deductions for individual retirement accounts. As Members of the House will recall, in his pension message some years ago, former President Nixon recommended the establishment of a new program under which a good share of the 30 million Americans not presently covered by pension plans would be encouraged to begin their own plans. This recommendation was presented in the form of a tax deduction granted to an employee who is not eligible or covered by a pension plan at his place of work to contribute up to $1,500 per year of his money into an account which would be set aside for his retirement. The encouragement involved was the tax deduction for that $1,500.

Both the House and Senate versions contained so-called IRA's and I think that this is one of the most critical provisions in this legislation. It is designed to allow noncovered individuals to obtain some pension benefits when they retire. Its purpose is worthy and its operation should be very simple.

The funds contributed to an individual retirement account will be available for the purchase of an annuity contract, a qualified retirement bond, an account in a bank, and in addition, certain life endowment insurance contracts to the extent that the amounts paid are properly allocable to retirement savings. On this latter point, it is important that an explanation be given as to why the conferees decided against allowing the funds of individual retirement accounts to be used for the purchase of life insurance generally.

It is important to note there is presently no tax deduction allowed for amounts paid for the purchase of life insurance, and the individual retirement accounts are designed to provide a retirement benefit, not a life insurance benefit. As a result, the conferees decided to allow the assets of individual retirement accounts to be used only for the retirement savings element in an endowment contract. I think this is a fair result and makes sense in light of what the purpose and intention of the individual retirement account provision is.

Mr. Speaker, there are many other provisions in this bill which deserve discussion and others will highlight them in their remarks. Suffice it to say, that I believe this is an important piece of legislation that deserves the support of each Member of the body. I hope it will pass by an overwhelming vote.

Mr. SMITH of Iowa. Mr. Speaker, I fully appreciate the fact that the subject matter covered by the Employee Retirement Income Security Act of 1974 is very extensive and complicated. There is a great need for private pension plans, deferred income plans, and other plans which receive tax benefits as an encouragement to providing supplemental retirement income. Realistically, social security by itself is not likely to be sufficient to provide enough for retirement income and the supplemental plans are very important.

In establishing a deferred income plan, older employees would not be able to receive benefits unless the plan provides for paying these

benefits out of the trust fund in excess of the contributions of such employees and thereby creating an unfunded liability which is paid back over a period of years—usually 15 years or more. If the company which has approved such a negotiated plan approves a plan preferred by the employees which includes an unfunded liability and if that company then goes out of business prior to the time when the unfunded liability has been funded, it is understood that the value of the vested rights of the younger employees will not be as much as they have paid in, because some of this money is needed to finance the retirement of older employes who had not paid in enough to purchase their lifetime annuity. Provisions of this bill which set up an insurance corporation and guarantee certain benefits, may expose employer units which go out of business after the effective date of this act to additional liabilities over and above those included in the negotiated contract. Employees of companies which went out of business after July 1, 1974, and prior to the effective date of this act may receive benefits from the fund without their employer units having paid any extra money and this money will have to come from those who are paying insurance premiums hereafter. Indirectly, this is paid from funds which would have otherwise provided employees with increased retirement benefits.

It seems to me that this plan as agreed upon expropriates from some employee groups whose plan must pay the extra insurance premium to give to others; and that it also has the overall effect of discouraging the future establishment of deferred income plans with unfunded liabilities to pay for the benefits for older members. It inevitably will also discourage establishing the kind of individual deferred income plans which have in the past provided the greatest amount of benefits for the contributions paid in. Although the overall objectives of the bill are laudible, I think these negative aspects are very bad and should be corrected in this bill and before irreparable damage is done to many people in the work force today.

While appreciating the overall espoused objectives of the bill and supporting the need for minimum vesting standards and other provisions such as those encouraging individuals to buy an individual annuity plan, I feel it would have been advisable to correct some of the bad features and believe the committees involved should consider amendments very soon.

Mr. SARASIN. Mr. Speaker, the private retirement system has always held out to America's workers the promise of economic security during retirement years. While millions of Americans did collect their benefits, the situation was not nearly as fortunate for thousands of others.

For the past 6 years, Members of the House and Senate have been studying the private retirement system, reviewing with our staffs the case histories of people who, after 20, 30, and even 40 years of faithful and competent service found themselves without the retirement benefits they had worked for all their adult lives.

The Federal Government, the only body with the broad powers necessary to address the problems of a system which covers an estimated 30 million workers, had to step in. Suggestions were made to improve the system, to tighten up the provisions and the loopholes which led to individual loss of rights. For what must have appeared

to be an inexcusable length of time, however, the necessary compromises could not be reached.

This year, however, success has not eluded us. Throughout the 93d Congress to date, we worked on the many provisions, this time avoiding the problems that had ended previous congressional efforts. House Education and Labor, House Ways and Means, Senate Labor and Senate Finance Committees combined resources and knowledge in an effort to produce a good, sound, realistic measure.

Today the culmination of our efforts lies before the House. We do not hold it up to our colleagues as a panacea for all the problems and we are not trying to tell the people of America that they will get all the benefits they are expecting.

We are offering legislation which is an excellent first step toward these goals, a bill which provides reasonable assurances that the benefits will be where they are supposed to be when they are supposed to be. Even more important, we have finally provided a foundation upon which we can base reforms for the future.

For the thousands of people who have lost their pensions through no fault of their own we can unfortunately do nothing. For our present and future working men and women, however, we can do something. We must approve the conference report on pension reform legislation and we must do it today. The American people have been waiting a long time for the many necessary changes, and this is one change that they cannot wait for any longer.

Mr. ROSTENKOWSKI. Mr. Speaker, the approval today of H.R. 2, by the full House of Representatives, marks the culmination of countless months of work on pension reform legislation. It will certainly be considered one of the most lasting achievements of this, the 93d Congress.

Since H.R. 2 is the end product of months of cooperative effort between the Committee on Ways and Means and the Committee on Education and Labor, credit for the final language of this legislation cannot be given to one man or even to one committee. But both the acting chairman of the Committee on Ways and Means, Mr. Ullman, and the head of the pension task force, Mr. Dent, deserve much credit for the many long hours spent laying the groundwork for this unusual but effective joint effort.

Without further expanding on the remarks of my fellow conferees as to the contents of this conference report, I would like to explain just one of the difficulties encountered by both Houses in drafting this extensive revision of the private pension system; a difficulty that caused considerable delay in the presentation of this bill to the full House for final approval.

The goal of the legislation was to strengthen the rights of employees under existing pension systems, while at the same time encouraging the expansion of these plans and the creation of new ones. As a result, the committee found it necessary to develop a delicate compromise between stricter regulations for protection of employees and sufficient inducements for continued participation by employers.

In doing this, our task was further complicated by the diversity of existing plans, some of which were affected quite unexpectedly under early drafts of this bill. Thus, it was constantly necessary to rework the various provisions in order that we not regulate certain plans out of

existence—a situation that would hardly have benefited the pensioner whose rights we were most trying to preserve.

Thus, in reviewing this legislation, it is necessary to remember that with the exception of certain collective bargaining agreements, pension plans are voluntarily set up by employers as an inducement to attract employees. In developing compromises in this area, both the committees and the conferees were necessarily cognizant of the need to encourage the continued existence of these plans. As a result, the conference report on H.R. 2 represents a true balance of the interests of all concerned. For example, its early vesting provisions will insure that each employee will have rights and not just empty promises as his retirement approaches, Similarly, the tax provisions not only will lessen the tax evasion that in the past has been practiced by many high salaried individuals, but will also continue to encourage the establishment of retirement plans by corporate employers.

H.R. 2 represents a delicate yet comprehensive reform of the present pension and retirement system in this country. As such, I feel that it deserves the full support of each Member of this House.

Mr. HILLIS. Mr. Speaker, I am pleased that the time has finally arrived for us to take final action on the Pension Reform Act.

I have been interested in and have worked hard on pension reform since the beginning of my first term in Congress. I submitted two bills dealing with pension protection to the Congress and testified before committee in support of stronger and improved protection for participants and beneficiaries of employee welfare and pension benefit plans. I am pleased to say that elements from my legislation have been incorporated in the Pension Reform Act before us today.

Rapid approval of this legislation would represent a major step forward in providing a strong and guaranteed private pension system in America.

I would urge President Ford to sign this measure posthaste so that we can see the provisions of this much needed act become law.

Mr. MATHIAS of California. Mr. Speaker, in our consideration of H.R. 2 we are concerning ourselves with the financial security of America's work force. Literally millions of our working men and women currently enrolled in pension plans will be directly affected by the passage of this reform legislation, and millions more will be indirectly affected by it due to the fact that they may, in the future, enter a retirement benefit program.

Too many Americans have been duped into believing that they need not fear financial worries upon retiring, and have been left with little or no security for their retirement years. This legislation will eliminate the chance of that happening by guaranteeing the proper management of moneys contained in pension funds and, in fact, by guaranteeing the existence of ample money to pay out the anticipated benefits.

Many Americans have suffered the loss of pension benefits due to markets and bankruptcies. The establishment of a termination insurance system will guarantee retirement benefits to employees who find themselves caught shorthanded by sudden shifts in the status of their employing agency.

For these reasons, and others, Mr. Speaker, I favor the adoption of the conference report accompanying H.R. 2. It is my hope that we can

have this legislation passed by both Houses of Congress, and on the President's desk for signing by Labor Day.

Mr. CARNEY of Ohio. Mr. Speaker, the conference report on the Employee Retirement Income Security Act of 1974, H.R. 2, now before the House gives me a great deal of satisfaction. Legislation protecting the pension benefits earned and paid for by employees during their working years has been one of my highest priorities ever since I became a Member of the Congress.

House bill 2 is not a perfect bill. No bill passed by the Congress ever is. But H.R. 2 will eliminate most of the glaring inequities in private pension plans in which 30 million working men and women have invested over $125 billion of their hard-earned money.

This pension reform bill does not require a company to have a pension plan. But it does make certain that persons who work for a company having such a plan will receive the full pension benefits to which they are entitled. This bill would forbid a company having a pension plan from excluding any employee 25 years of age with at least 1 year of service. It gives employees a vested right to their pension benefits in one of three ways: First, 100 percent vesting after 10 years of service; second, graduated 100 percent vesting after 15 years of service; third, 50 percent vesting when years of service and age of employee total 45, 10 percent per year over the next 5 years, and at least 50 percent vesting after 10 years of service.

Second, this pension reform bill requires that all pension plans be properly funded. Third, it requires full disclosure of all significant information about a pension plan, including the requirement that a plan summary or plan description be given to each plan participant. Fourth, it sets high fiduciary standards, including personal liability of pension fund administrators. Fifth, the bill establishes a portability system in which an employee's pension credits from one qualified plan may be transferred to another qualified plan upon the approval of the new plan. Sixth, it requires that all pension plans be certified by the U.S. Department of Labor and the Internal Revenue Service as being in compliance with the standards under this law. Seventh, it provides a Federal reinsurance program guaranteeing the payment of all nonforfeitable pension benefits. Eighth, it provides liberal tax deductions for the retirement plans of self-employed individuals.

Because of the safeguards contained in H.R. 2, an employee whose company goes out of business or merges with another company will not lose his pension benefits. Because of the safeguards contained in H.R. 2, an employee who is laid off, or fired, or quits his job will not lose the pension benefits which he has earned.

The Employee Retirement Income Security Act is a reasonable and responsible bill. It is the result of long deliberations and a great deal of hard work. I commend Senator Harrison A. Williams and Senator Jacob K. Javits who sponsored the pension reform bill in the Senate, and my colleagues, Congressman John H. Dent and Congressman Al Ullman, who managed the pension reform bill on the floor of the House. I also congratulate Speaker Albert, who made the pension reform bill one of his top priorities for the 93d Congress.

Mr. Speaker, the Pension Reform Act will go down as one of the most important pieces of legislation passed by this Congress. It will

help restore the confidence of the American people in their Government. I urge my colleagues to support the bill.

Mr. REUSS. Mr. Speaker, today the House will no doubt dispatch the conference version of H.R. 2 to the Senate and the White House. As one who has long supported pension reform, I am delighted to see pension reform become law. As one who has long fought for tax reform, however, I am saddened by the discriminatory tax provision of the bill, and particularly by the increase in the "Keogh plan" loophole.

For 10 years, self-employed individuals—mainly lawyers, doctors, accountants—have received a tax break—known as the Keogh plan, after its original sponsor—on their contribution to retirement savings—first, a deduction of up to $1,250 a year, later liberalized to $2,500. H.R. 2 would raise the maximum deduction to $7,500.

In 1968, the Treasury Department's annual Statistics of Income published, for the first and last time, a detailed breakdown, by income classes, of those who used the Keogh plan. Over half had adjusted gross incomes over $25,000—sufficient to put them in the richest 5 percent of American families. These self-employed professionals are not necessarily among the legendary superrich, but in a country where the median income is only $12,051, they are certainly in the very comfortable upper middle class.

During these same years, more than half of American workers—53 percent in 1973—had neither qualified corporate pension plans nor tax-deferred retirement accounts. Included in his majority, according to the Treasury Department, are most low-paid workers, employees in small businesses, farmers, fishermen.

These are the workers who need the most help. They are the families most affected by the continued high inflation in the cost of food, fuel, housing. They are the workers whose payroll taxes have risen rapidly these past 3 years. They are the parents who can barely scrape together enough money for their children's education, or for a decent home. They are the ones who need the greatest encouragement and help in saving for retirement.

H.R. 2 does give them some incentive to save—a $1,500 a year maximum tax deduction for retirement account contributions. This is a welcome move indeed.

But at the same time, the pension bill triples the Keogh deduction for self-employed individuals. Compare the $7,500 which Keogh plan beneficiaries can set aside, tax-free, with the $1,500, the maximum permitted uncovered employees.

Is the need for Keogh plan beneficiaries five times as great? Quite the contrary. The relatively well-to-do Keogh plan users spend a smaller percent of income on basic necessities, and are thus better padded against inflation. They have the cash to choose from a wide range of profitable investment opportunities, many of which also reduce their tax bills.

It was argued that unless the Keogh deduction is raised, self-employed professionals would incorporate to take advantage of more liberal corporate pension benefits. Surely the simplest and cheapest—for widening the Keogh loophole will cost the taxpayers $150 million a year—way to prevent this shift would have been to place a reasonable limit on corporate pension benefits.

Ostensibly, H.R. 2 does limit corporate pension plans—but in such

a way that few top corporate executives will feel the difference. For "defined contribution" plans, the bill limits the amount on which tax may be deferred to 25 percent of earned income or a maximum of $25,000 a year. For "defined benefit" plans, the benefit is limited to a $75,000 annuity, which means an annual set-aside of about $35,000. Since, according to a recent SEC survey of the highest paid executives in private industry, top corporate officers now look forward to an average retirement annuity of $61,000, the pension reform bill "limitations" seem less than stringent.

This, then, is what the tax provisions of H.R. 2 amount to: $1,500 a year taxfree for uncovered, largely modest-income employees; $7,500 for self-employed individuals, mainly well-to-do professionals; and up to $35,000 a year for the best-paid corporate executives. In other words, H.R. 2 makes possible a huge tax subsidy for those who raked in the money during their working days, and a chicken-feed tax subsidy for those who merely make a bare-bones living. It is the greatest unfairness to the modest-income majority who not only get the short end of the stick when they retire, but must make up through their taxes while they work the revenues lost through these and similar tax loopholes for the rich.

These tax changes are clearly discriminatory, ill-coordinated, and reflect too obviously the relative lobbying strength of corporations, professional associations, and the average worker. The tax side of the pension bill is unworthy of the name "reform," unworthy of Congress and its supposed dedication to the interests of the average citizen. One can only hope that a new and clearer-sighted Congress will do better in 1975.

Mr. McCLORY. Mr. Speaker, the adoption today of the conference report on H.R. 2 marks another near final step taken by the Congress to assure American workers eventual pension plan security. H.R. 2 is the result of more than 5 years of committee work and task force investigation which revealed gross abuses of the pension rights of thousands of our Nation's workers. When the Employee Benefit Security Act becomes public law, it will cover more than 30 million Americans who are presently participants in private pension plans—with assets of more than $150 billion.

While it should be noted that the number of abuses have been relatively small in proportion to the several million workers that are covered by private pension plans, I cannot help but recall the plight of several hundred Elgin National Watch Co. employees, almost all of whom are residents of my 13th Congressional District of Illinois. Their case was atypical—perhaps unique—in that the watch company fund was overfunded—while most losses sustained by pension plan participants result from insufficient funds. At the heart of the Elgin controversy was the question, "who should be entitled to the excess funds"—the pensioners or the company, which had come under the direction of new management who wished to liquidate the pension fund.

Nonetheless, the experience of the Elgin pensioners sharply illustrated the need for minimum Federal standards to insure against loss of pension funds that rightfully belong to the contributing employees.

After several protracted lawsuits in two States, the Elgin case was finally settled and some 1,089 Elgin Watch Co. pensioners received initial cash payments followed by lifetime pension payments.

As the Representative in Congress serving these watch company employees, I am proud to have played a role in the development of this landmark legislation. I also take pride in my colleagues—particularly those of the Education and Labor Committee and the Ways and Means Committee—whose arduous task it was to write acceptable and compatible bills for final House consideration.

Mr. FORD. Mr. Speaker, I rise in favor of the pension reform conference report.

Mr. Speaker, for more than 7 years I have been working with my colleagues on the Education and Labor Committee to enact legislation to protect the pensions of our working men and women. Today, at last, I am able to rise in support of this final passage of the Employee Retirement Income Security Act of 1974—a comprehensive pension reform law which will protect the pension benefits of millions of American workers.

With the enactment of this legislation we intend to end the problem which so many American workers face when they learn that after working for several years the pension benefits to which they thought they were entitled are nonexistent—nonexistent because of inadequate vesting protection, or poor or negligent administration, because the plan was not properly funded.

Mr. Speaker, those of us who have been involved in this legislation from the outset will recall that it was 7 years ago when the General Subcommittee on Labor, on which I then served, first began its work on pension protection legislation. Since that time we have continually conducted hearings, revised several different legislative proposals and we have been constantly negotiating with all the interested parties.

The bill we have before us today represents the work of this past 7 years during which we have dealt with enormous complexities related to the task of protecting workers' pensions. The final product is an excellent compromise which all of us should support.

I should like to remind my colleagues that one problem we continually had to deal with in passing this legislation was that we could not come up with a bill that was acceptable to all facets of organized labor. I am happy to say that the bill we now have before us has received the enthusiastic support of virtually every segment of organized labor, including the AFL-CIO, the UAW, and the United Steel Workers. It has the support of the hundreds of my own constituents who have contacted me over the years urging me to support legislation to protect their hard-earned pensions.

The Employee Retirement Income Security Act will provide for Federal standards of fiduciary responsibility, for minimum standards of vesting and funding, and perhaps most important of all, for pension plan termination insurance.

At this point, I would like to summarize its key provisions. This legislation establishes a tighter reporting and disclosure requirement for pension plans, as well as providing for standards of conduct for fiduciaries—the persons who control the management of pension funds. It also requires that the administrator of a plan must provide each

participant with a written description of the plan in language that an average and reasonable worker can be expected to understand intelligently.

The vesting requirement provision of the bill provides for three alternative formulas. One of the following rules would meet the minimum requirements provided for under this legislation: the 10-year service rule which would guarantee 100 percent vesting after 10 years of covered service, but under which no vesting would occur prior to a full 10 years of service; the graded 15-year service rule which provides for 25 percent vesting after 5 years of covered service, increasing by 5 percent for each of the next 5 years and 10 percent for the subsequent 5 years until 100 percent vesting is achieved at the end of the 15th year; or the "rule of 45," under which 50 percent vesting would occur when age plus the number of years of covered service equals 45. Under this rule, an employee would have to be vested 50 percent after 10 years. The vesting would increase by 10 percent each subsequent year so that an employee would be 100 percent vested in 15 years.

The bill also provides for assurances that the pension plan will be adequately funded. This protection is guaranteed by the provision which requires an employer to make payments toward the principal of unfunded accrued liabilities. A liability is what is incurred when the employer grants pension credits to employees for past services, and an unfunded liability is what exists when assets are not sufficient to cover the liabilities over the long run.

Mr. Speaker, one of the most important provisions of the legislation before us today is that part of the bill which provides for pension plan termination insurance. This provision is designed to protect workers who have been paying into pension plans for years, only to learn that, prior to their retirement, the plans, for one reason or another, have terminated. This provision would establish a Pension Benefit Guaranty Corporation administered by a Board of Directors consisting of the Secretaries of Labor, Commerce, and Treasury.

Mr. Speaker, I cannot overstate the importance and the urgency of the need for prompt enactment of this legislation into law. Ever since I first cosponsored pension protection legislation over 6 years ago, my office has been deluged with mail from my constituents demanding that Congress provide the American working men and women with protection for their private pension plans.

Over the past years, the committee has traveled to my own State of Michigan and conducted hearings in which we have been confronted by the distressing tales of workers who have suffered great damage, because of the inadequacy of our present pension laws. The committee has heard from witnesses who have described situations resulting in lost and reduced pension benefits as a result of the closing of major employers in the Detroit area such as the Garwood Division of Sargent Industries, of Packard Motors, and of Essex Wire.

The committee was told of the situation which resulted in 1960 when a major Detroit newspaper shut down and paid its over 400 employees lump-sum pension benefits of approximately $160. We heard from steelworkers who lost jobs as well as pension benefits as a result of the shutdown of the Mahon Industrial Division and the Taylor

Cement Co., and we heard the testimony of one individual who received, after 29 long years of service, a lump-sum payment of $1,800 when the Garwood plant closed down in my own district recently.

Mr. Speaker, these were all stories which were related to the committee when it traveled to Michigan. Similar stories can be and have been heard in virtually every State and every congressional district in this country. The evidence in support of the need for the legislation we are considering today is insurmountable.

At this point, I would like to commend my good friend and colleague, the distinguished chairman of the General Subcommittee on Labor, Mr. Dent, and all the members of our committee who worked so diligently on this legislation. I would also like to commend the staff members of the special pension task force for their long hours of work on this bill.

In addition, I might add that the Ways and Means Committee, which added the special provisions for additional pension benefits for the self-employed, should be commended for its cooperation in getting this bill passed.

Mr. Speaker, the protections which this bill will afford to our American working force are long overdue. At this point, I urge my colleagues from both sides of the aisle to give this legislation their unequivocal support so that it can be sent to the White House and be signed into law at the earliest possible date.

Mr. HARRINGTON. Mr. Speaker, today we are considering the pension reform conference report. While it is my intention to support the conference bill, which will provide urgently needed pension reform to the million of Americans employed in private industry, this legislation can only be viewed as a modest first step toward development of completely equitable and all-encompassing retirement plans.

The Employee Benefit Security Act of 1974 basically establishes standards for private pension plans currently in existence. Such a reform is long overdue. Too often we hear of individuals who receive no pension, after many years of employment, because they retired or quit before an arbitrarily designated date for "vesting" of benefit credits, or because they were too young or too old to participate in the plan. A company may go bankrupt and thus all pension funds are lost. No safeguards currently exist to prevent a business from simply dropping its retirement plan. If a company merges or is sold, the new owners may alter the plan, with no consideration of benefits accrued in the previous plan. Hopefully, this new legislation will prevent these injustices from occurring in the future.

PROVISIONS OF THE PENSION REFORM BILL

The pension reform bill will expand the number of employees eligible for pension plans by establishing a low minimum number of hours worked in a year in order to qualify—1,000 hours or approximately one-half time—a low minimum age, and a high maximum age for plan participants. An employee will no longer need to wait many years before he or she begins to accumulate pension credits for years worked. Basically, the bill states that, at age 25, an employee who has

worked 1 year must be included in the pension plan, if the company has one. Besides establishing 25 as the minimum age, the bill also requires that older employees not be excluded from a pension plan due to age, unless they are within 5 years of retirement. Furthermore, by redefining a "year's work" as 1,000 hours, many part-time and seasonal workers will now become eligible for retirement plans.

The pension reform bill establishes two alternate plans, one of which a business must elect, to provide an orderly method of accumulating pension credits. An employer will no longer be able to hold back on sizable accumulations until an employee has worked for many years.

One of the most important provisions requires selection by a business of one of three methods to "vest" an employee's accrued credit, insuring him or her of an orderly accumulation of vested credits, with at least 50 percent vested after 10 years and 100 percent vested after 15 years of service.

The new full vesting will not guarantee retirement benefits, however, if a company goes bankrupt or merges or drops its retirement plan. This legislation provides strict standards for a company's financing of pension plans: funds will be administered, completely independent of the employer, through trusts or insurance companies; contribution schedules for the company will be established to insure adequate funds to meet current pension obligations.

Since even the above provision might not save an employee's pension, a newly established Pension Benefit Guaranty Corporation will insure employee retirement benefits if a company should be unable to meet its pension plan commitments.

Finally, the legislation requires a number of reports, to open up the often incomprehensible labyrinth of private pension plans to public view. Companies will report annually to the Secretary of Labor, detailing their compliance, and in addition, will provide employees with an explanatory booklet of the pension plan in understandable language.

For the 40 million employees in private industry not covered by a pension plan, the legislation would allow establishment of an Individual Retirement Account—IRA: an employee may put 15 percent of his or her salary, up to $1,500 annually, into an IRA and receive a tax deduction for the amount. Self-employed people will also be able to put as much as 15 percent of their salary, up to $7,500, into a fund to earn income which is tax-free until retirement.

WEAKNESSES OF THE PENSION REFORM BILL

Despite the improvements to private pension plans, we cannot overlook the shortcomings of this pension reform legislation, since these weaknesses reveal the areas in which further legislation is needed.

One common inadequacy is the lack of a provision for complete portability of pensions. If an employee has gained 50 percent vested credits after 10 years service and then quits, he or she will keep that vested amount; however, these years of service will not be counted at the new place of employment. Thus, while this legislation does remove some of the restrictions hampering full freedom of employment, it does not entirely free an employee from the need to stay at one place of

employment for a certain length of time—5 or 10 years, depending on the plan—in order to have his credits vested.

Another weakness of this legislation is the staggered and late effective dates. The priorities of the bill's authors are somewhat suspect here, since the effective dates seem to reflect a certain prejudice in favor of the employer.

For example, retroactive to the beginning of this year, the amount of money the self-employed can set aside is considerably increased, especially for those earning over $35,000 annually. This provision has been criticized as primarily an aid to the affluent as a result—we cannot help but question the motive for retroactivity in this case.

Only pension plans set up after enactment of the new law are immediately required to conform to the new standards; companies with plans already in existence have until January 1, 1976, to comply. This delay seems incomprehensible to me. Since next January, companies with plans must begin detailed reporting to the Secretary of Labor, there is no reason that compliance with the other regulations could not also go into effect at that time.

While there appeared to be a certain amount of haste to allow retroactive deductions for the self-employed, the bill is remarkably slow to enforce another provision: it postpones until January 1, 1976, the new limits on corporate contributions to retirement plans for executives.

Since by voting in favor of H.R. 2 and the conference report, we are displaying our recognition of the need for reform, to delay without good reason the dates of compliance for employers with the new standards, while rushing through a tax deduction provision primarily for the affluent, is at best hypocritical.

A final criticism is the insufficient motivation for companies to establish new pension plans, especially now that new, stricter guidelines are in effect. Furthermore, the bill only insures that the amount of pension promised is paid, and paid fairly. No judgment is made as to the sufficiency of the promised amount. When we consider that many elderly Americans are barely surviving on their minimal fixed incomes, we realize that the size of the pension, not just its reliability, can be of crucial importance. While I support this effort today to aid millions of workers, I would hope that we can continue to pursue this issue of providing sufficient income for all our Nation's elderly.

In short, Mr. Speaker, although this bill does have many flaws, it is at least an encouraging first step toward significant private pension reform.

Mr. DOMINICK V. DANIELS. Mr. Speaker, I rise in support of the conference report on H.R. 2, providing for long past due reform of pension law in this country.

During the century that private pension plans have been with us, they have grown phenomenally—and without regulation.

In 1940, private pension plans covered 4.1 million employees and had total assets of $2.4 billion. In the next 10 years the number of enrolled employees more than doubled and total assets increased fivefold. By 1960, the number of enrolled employees more than doubled again and assets increased 2½ times.

Today there are 30 million employees enrolled in private pension plans—total assets of which are over $130 billion. In 30 years the num-

ber of enrolled workers has increased by seven times and the total assets are worth 50 times their value in 1940.

But, consider that out of the 30 million employees enrolled in plans, almost a third, 10 million, will receive no benefits whatever.

Of those workers who in the last 20 years left their job for any reason at all—voluntarily, discharged, plant closing, and retirement—83 percent lost all rights to their pension benefits.

As a matter of equity and fair treatment, as a matter of industrial justice, an employee covered by a pension plan is entitled after a reasonable period of service to the protection of future retirement benefits against any possible termination of his employment.

Without vesting, a worker displaced after long years of service is denied all of his accrued pension protection. A worker in a similar position who voluntarily changes his employment has to forfeit his right to future pension. Both circumstances are charged with inequity.

A pension is not a gift from the employer. It has become universally recognized by employers, by workers, and by unions that pension benefits are part of an employee's compensation. It is the other half of the paycheck. And millions of employees have been cheated and unless we pass this conference report today, many millions more will be cheated out of that second paycheck.

Vesting is universally recognized as fair and necessary. But in almost one-third of all pension plans it is absent. In the remainder, only overly restrictive age and service or other requirements for all practical purposes make the vesting provision inoperative.

Consider the following personal histories related to the Education and Labor Committee, of which I am a member.

A loyal employee who, after holding several responsible positions with the same company for 26 years, was discharged without pension rights at the age of 59.

A salesman with 28 years of service was discharged at the age of 56 without pension rights because his division closed down. To be eligible for a pension, he would have had to remain with the company 9 more years until age 65.

A worker, with 36 years of service with the same company, lost all pension rights because the factory shut down. He was unable to follow the company to its new location, because of his wife's illness.

A 64-year-old man who worked 15 years for one company applied for his pension after he was laid off and discovered that he was only 1 year short of eligibility. He, too, lost all benefits.

These are not uncommon examples of pension plans without adequate or equitable vesting provisions. These workers, like millions of others enrolled in private pension plans did not have sufficient vesting rights in their pension programs even though they had been long-time employees.

Today's economy is rapidly shifting. There are changes in consumer and business demand, corresponding shifts of jobs among industries, occupations, and geographical areas. It is unreasonable that vesting should not take effect after 10 years of continuous employment and it is unreasonable that those vested rights not be "portable."

In those industries predominantly covered by pension plans such as manufacturers and public utilities, half of the workers with 10 or

more years of service will not be working for the same employer by the time they reach retirement age. This raises not only the problem of vesting, but that of portability; the right of an employee to apply pension rights accrued with company A to the pension benefits he may enjoy with new employer B, C, D, and however, many subsequent employers he may work for.

We have been living under an archaic pension system. It has no relationship to today's fast moving economy and our mobile work force. The time for change is long overdue.

But even if vesting rights are reasonable and we can make them portable, there must be some assurance that the funds themselves are adequately financed and safeguarded.

I recall one company which had a moderate pension plan. There were about 11,000 employees and former employees enrolled, 4,500 were 40 years or older and had worked at least 10 years with the company and had vested rights; 3,600 employees were already drawing benefits. Their average age was 51 and the average length of service was 23 years.

The fund had assets of $24 million held in trust by the Chase Manhattan Bank.

In 1964, the company folded. Because of insufficient and improper funding of the plan, the average payment of annuities was only $600.

One of my colleagues on the Education and Labor Committee was a member of the State legislature where the company was located. He visited the area at the time of the shutdown. He recalled to me that several workers went out to their garages and hung themselves. After working for 20 to 30 years, they could not bear the thought of living without the pension security they had counted on all their lives.

This was not a fly-by-night company. It had been in business for over a century and had started by making covered wagons. The company was the Studebaker Corp.—the victim of a rapidly changing economy, consumer, and business demands.

We talk about living in a free society. The essence of liberty is as much economic freedom as it is political freedom.

But as far as "freedom from want" in old age is concerned, there is no choice. Until now, the promise of your pension has been this: If you remain in good health and stay with the same company until you are age 65; and if the company is still in business; and if your department has not been abolished; and if you had not been laid off for too long a period; and if there is enough money in the fund; and if that money has been prudently managed, you may get a pension.

That is not good enough, Mr. Speaker.

It is utterly and totally indefensible in an American society as affluent as ours, that an individual's economic security in his later years should rest on such a flimsy foundation and a phony promise; to be so endangered by such an incredible list of "if's" and "maybe's." I strongly urge my colleagues to support this bill and right the great wrongs suffered by millions of workers.

GENERAL LEAVE

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their

remarks, and include extraneous matter, on the conference report on the bill, H.R. 2, presently under consideration.

The SPEAKER pro tempore (Mr. Smith of Iowa). Is there objection to the request of the gentleman from Oregon?

There was no objection.

(Mr. Ullman asked and was given permission to revise and extend his remarks and include extraneous matter.)

Mr. ULLMAN. Mr. Speaker, I have no further requests for time.

Mr. ERLENBORN. Mr. Speaker, we have no further requests for time.

The SPEAKER. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ERLENBORN. Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 407, nays 2, not voting 25, as follows:

[ROLL No. 504]

YEAS—407

Abdnor
Abzug
Adams
Addabbo
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Arends
Armstrong
Ashbrook
Ashley
Badillo
Bafalis
Baker
Barrett
Bauman
Beard
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blackburn
Blatnik
Boggs
Boland
Bolling
Bowen
Brademas
Bray
Breaux
Breckinridge
Brinkley
Brooks
Broomfield
Brotzman
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill, N.C.
Broyhill, Va.
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Burton, John
Burton, Phillip
Butler
Byron
Camp
Carey, N.Y.
Carney, Ohio
Carter
Casey, Tex.
Cederberg
Chamberlain
Chappell
Chisholm
Clancy
Clark
Clausen, Don H.
Clawson, Del
Clay
Cochran
Cohen
Collier
Collins, Ill.
Conable
Conlan
Conte
Conyers
Corman
Cotter
Coughlin
Crane
Cronin
Culver
Daniel, Dan
Daniel, Robert W., Jr.
Daniels, Dominick V.
Danielson
Davis, S.C.
Davis, Wis.
de la Garza
Delaney
Dellenback
Dellums
Denholm
Dennis
Dent
Derwinski
Devine
Dickinson
Diggs
Dingell
Donohue
Downing
Drinan

Dulski
Duncan
du Pont
Eckhardt
Edwards, Ala.
Edwards, Calif.
Eilberg
Erlenborn
Esch
Eshleman
Evans, Colo.
Evins, Tenn.
Fascell
Findley
Fish
Fisher
Flood
Flowers
Flynt
Foley
Ford
Forsythe
Fountain
Fraser
Frelinghuysen
Frenzel
Frey
Froehlich
Fulton
Fuqua
Gaydos
Gettys
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Grasso
Green, Oreg.
Green, Pa.
Griffiths
Gross
Grover
Gubser
Guyer
Haley
Hamilton
Hammerschmidt
Hanley
Hanna
Hanrahan
Hansen, Idaho
Harrington
Harsha
Hastings
Hawkins
Hays
Hechler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Hogan
Holifield
Holt
Holtzman
Horton
Hosmer
Howard
Huber
Hudnut
Hungate
Hunt
Hutchinson
Ichord
Jarman
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Jordan
Karth
Kastenmeier
Kazen
Kemp
Ketchum
King
Kluczynski
Koch
Kuykendall
Kyros
Lagomarsino
Landrum
Leggett
Lehman
Lent
Long, La.
Long, Md.
Lott
Lujan
Luken
McClory
McCloskey
McCollister
McCormack
McDade
McEwen
McFall
McKay
McKinney
Madden
Madigan
Mahon
Mallary
Mann
Maraziti
Martin, Nebr.
Martin, N.C.
Mathias, Calif.
Mathis, Ga.
Matsunaga
Mazzoli
Meeds
Melcher
Metcalfe
Mezvinsky
Milford
Miller
Mills
Minish
Mink
Minshall, Ohio
Mitchell, Md.
Mitchell, N.Y.
Mizell
Moakley
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Moss
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers
Natcher
Nelsen
Nichols
Nix
Obey
O'Brien
O'Hara
O'Neill
Owens
Parris
Passman
Patman
Patten
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Poage
Powell, Ohio
Preyer
Price, Ill.
Price, Tex.
Pritchard
Quie
Quillen
Railsback
Randall
Rangel
Rees
Regula
Reid
Reuss
Rhodes
Riegle
Rinaldo
Roberts
Robinson, Va.

Robison, N.Y.
Rodino
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, Pa.
Rose
Rosenthal
Rostenkowski
Roush
Rousselot
Roy
Roybal
Runnels
Ruppe
Ruth
Ryan
St Germain
Sandman
Sarasin
Sarbanes
Satterfield
Scherle
Schneebeli
Schroeder
Sebelius
Seiberling
Shipley
Shoup
Shriver
Shuster
Sikes
Sisk
Skubitz
Slack
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Staggers
Stanton, J. William
Stanton, James V.
Stark
Steelman
Steiger, Ariz.
Steiger, Wis.
Stephens
Stokes
Stratton
Stubblefield
Studds
Sullivan
Symington
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thompson, N.J.
Thomson, Wis.
Thone
Thornton
Tiernan
Towell, Nev.
Traxler
Treen
Udall
Ullman
Vander Jagt
Vander Veen
Vanik
Veysey
Vigorito
Waggonner
Waldie
Walsh
Wampler
Ware
Whalen
White
Whitehurst
Whitten
Widnall
Wiggins
Williams
Wilson, Bob
Wilson, Charles H., Calif.
Wilson, Charles, Tex.
Winn
Wolff
Wright
Wyatt
Wydler
Wylie
Wyman
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Ga.
Young, Ill.
Young, S.C.
Young, Tex.
Zablocki
Zion
Zwach

NAYS—2

Collins, Tex.
Landgrebe

NOT VOTING—25

Anderson, Ill.
Aspin
Brasco
Cleveland
Davis, Ga.
Dorn
Gray
Gude
Gunter
Hansen, Wash.
Hébert
Latta
Litton
McSpadden
Macdonald
Mayne
Michel
Nedzi
Podell
Rarick
Rooney, N.Y.
Steed
Steele
Stuckey
Van Deerlin

So the conference report was agreed to.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Davis of Georgia.
Mr. Rooney of New York with Mr. Dorn.
Mr. Macdonald with Mr. Gray.
Mr. Steed with Mrs. Hansen of Washington.
Mr. Podell with Mr. Litton.
Mr. Nedzi with Mr. Michel.
Mr. Van Deerlin with Mr. Anderson of Illinois.
Mr. Gunter with Mr. Cleveland.
Mr. Stuckey with Mr. Latta.
Mr. Rarick with Mr. Mayne.
Mr. Aspin with Mr. Gude.
Mr. McSpadden with Mr. Steele.

The result of the vote was announced as above recorded.
A motion to reconsider was laid on the table.

Authorizing the Clerk To Make Corrections in H.R. 2, Employment Retirement Income Security Act of 1974

Mr. Ullman. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 609) and ask unanimous consent for its immediate consideration.
The Clerk read the concurrent resolution, as follows:
[The text of the concurrent resolution as read follows:]

93D CONGRESS
2D SESSION

H. CON. RES. 609

IN THE HOUSE OF REPRESENTATIVES

AUGUST 22, 1974

Ordered to be printed as passed

CONCURRENT RESOLUTION

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 2) to provide for pension reform, the Clerk of the House of Representatives shall make the following corrections:

(1) In the item relating to section 405 of the bill in the Table of Contents, strike out "of" and insert in lieu thereof "by".

(2) In the item relating to part I of subtitle A of title II in the Table of Contents of the bill strike out "Part I" and insert in lieu thereof "Part 1".

(3) In the item relating to part II of subtitle A of title II in the Table of Contents of the bill strike out "Part II" and insert in lieu thereof "Part 2".

(4) In the item relating to part III of subtitle A of title II of the bill strike out "Part III" and insert in lieu thereof "Part 3".

(5) In the item relating to part IV of subtitle A of title II in the Table of Contents of the bill strike out "Part IV" and insert in lieu thereof "Part 4".

(6) In the item relating to part V of subtitle A of title II in the Table of Contents of the bill strike out "Part V" and insert in lieu thereof "Part 5".

(7) In paragraph (1) of section 3, strike out "plan was established or maintained" and insert in lieu thereof "plan, fund, or program was established or is maintained".

(8) In paragraph (18) of section 3—

(A) insert "of subtitle B" after "part 4";

(B) strike out "or which has been listed for more than 1 month (at the time of such sale or purchase) on an electronic quotation system administered by a national securities association registered under such Act,"; and

(C) strike out "or so listed on such an electronic quotation system,".

(9) In paragraph (35)(B) of section 3, strike out "individual account plans" and insert in lieu thereof "an individual account plan".

(10) In paragraph (37)(A)(ii) of section 3 of the bill, strike out "agreement" and insert in lieu thereof "agreements".

(10A) In paragraph 37(A)(ii) of section 3 of the bill insert "an" before the word "employee".

(11) In section 4(b)(5) of the bill, strike out "which" before "is unfunded".

(12) In the last sentence of section 102(a)(1) of the bill, strike out "Any" and insert in lieu thereof "A summary of any".

(13) In section 103(b)(3)(D) of the bill insert after the phrase "and his relationship or" the words "that of".

(14) In section 103(d)(8) of the bill, strike out "302" and insert in lieu thereof "302(c)(3)".

(15) In section 103(e) of the bill, strike out "fiscal year" and insert in lieu thereof "plan year".

(16) Strike out paragraph (1) of section 104(b) of the bill and insert in lieu thereof the following:

"(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary, plan description, and all modifications and changes referred to in section 102(a)(1)—

"(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

"(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 102 which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period, this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 102 every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 102(a)(1), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan."

(17) In section 104(d) of the bill, insert "the" before "Treasury".

(18) In section 107, strike out "under section 104(a)(3)" each place it appears and insert in lieu thereof "or simplified reporting requirement under section 104(a) (2) or (3)".

(19) In section 108, strike out "sections 101 through 107 and section 412 of this Act" each place it appears, and insert in lieu thereof "this part or section 412".

(20) In section 110(a) of the bill, strike out "or any type of pension plan" and insert in lieu thereof ", or class of pension plans,".

(21) In section 111(a)(1) of the bill, strike out "[and events]" and insert in lieu thereof "and events".

(22) In paragraph (7) of section 201 of the bill, strike out "Such plan is".

(23) In section 203(a)(3)(D)(ii) of the bill strike out "break-in" and insert in lieu thereof "break in".

(24) In section 203(b)(4) of the bill—

(A) strike out "((A)" and insert in lieu thereof "(A)";

(B) strike out "((B)" and insert in lieu thereof "(B)"; and

(C) strike out "204(d)(1).)" and insert in lieu thereof "204(d)(1).".

(25) In section 204(b)(1)(A) of the bill, strike out the third sentence.

(26) In the first sentence of section 204(b)(1)(C) of the bill, strike out "at" after "would be entitled".

(27) In section 204(b)(1)(C) of the bill strike out "particiapted" and insert in lieu thereof "participated".

(28) In section 204(b)(1)(D) of the bill strike out "accured" and insert in lieu thereof "accrued".

(29) In section 204(b)(1)(G) of the bill strike out the second sentence and insert in lieu thereof the following: "The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act which benefits under the plan—

"(i) do not exceed social security benefits, and

"(ii) terminate when such social security benefits commence."

(30) In section 204(c)(1)(D) of the bill strike out "realtionship" and insert in lieu thereof "relationship".

(31) Strike out the last sentence of section 204(e) of the bill and insert in lieu thereof the following: "In the case of a defined contribution plan, the plan provision required under this subsection may provide that such repayment must be made before the participant has any 1-year break in service commencing after such withdrawal."

(32) In section 204(e) of the bill strike out "subparagraph" and insert in lieu thereof "subsection".

(33) In section 204(h) of the bill—

(A) strike out the parenthesis before "For", and

(B) strike out the parenthesis after the period at the end thereof.

(34) Strike out section 206(a) of the bill and insert in lieu thereof the following:

"SEC. 206. (a) Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

"(1) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

"(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

"(3) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, such plan shall provide that a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury."

(35) In section 206(b)(1), strike out "such plan" and insert in lieu thereof "a pension plan".

(36) In section 206(d)(2) of the bill insert after "section 4975" the first time it appears "of the Internal Revenue Code of 1954" and insert before the period at the end thereof "of such Code".

(37) In section 209(a)(1)(B) of the bill strike "termintes" and insert in lieu thereof "terminates".

(38) In section 209(a)(2) of the bill, strike out "of Labor" in the first sentence, and "of Labor or his delegate" in the second sentence.

(39) In section 210(a) of the bill—

(A) insert "of this subsection" after "the following provisions"; and

(B) insert "as" after "shall be applied" in paragraph 2.

(39A) In section 211(c)(1), strike out "section 204" and insert "sections 204 and 205".

(40) In section 211(c)(2)(A), strike out "a participant of in the form of an annuity for the life of the participant with a survivor annuity for the life of his spouse" and insert in lieu thereof "the participant".

(41) In section 211(d), strike out "(1)".

(42) In section 301(a) (5) and (6) of the bill strike the comma at the end and insert in lieu thereof a semicolon.

(43) In section 301(a) (7) and (8) of the bill strike the opening parenthesis before the semicolon at the end of such paragraph.

(44) In section 302(a)(1) of the bill strike the second sentence and insert in lieu thereof "A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency."

(45) In section 302(c)(2)(B) of the bill strike "indefault" and insert in lieu thereof "in default".

(46) In section 302(c)(8) of the bill insert the article "a" before "plan" the first time it appears.

(47) In section 303(d) of the bill, strike out the parenthesis before "For", and strike out the parenthesis after the period at the end thereof.

(48) In section 306(c)(1) of the bill insert after "Secretary finds to be" the following: "collective bargaining agreements between employee organizations".

(48A) In section 306, insert at the end thereof the following:

"(d) In the case of a plan maintained by a labor organization which is exempt from tax under section 501(c)(5) of the Internal Revenue Code of 1954 exclusively for the benefit of its employees and their beneficiaries, this part shall be applied by substituting for the term 'December 31, 1975' in subsection (b), the earlier of—

"(1) the date on which the second convention of such labor organization held after the date of the enactment of this Act ends, or

"(2) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subsection (c) be substituted."

(49) In section 401(a)(2), strike out "a plan consisting of an" and insert in lieu thereof "any".

(50) Strike out section 403(b)(4) of the bill and insert the following:

"(4) to a plan which the Secretary exempts from the requirement of subsection (a) and which is not subject to any of the following provisions of this Act:

"(A) part 2 of this subtitle,

"(B) part 3 of this subtitle, or

"(C) title IV of this Act; or".

(51) In section 403(c)(1), strike out "allocation of assets of terminated plans" and insert in lieu thereof "termination of insured plans".

(52) In section 403(c)(1)(C) of the bill strike "deductability" and insert in lieu thereof "deductibility".

(53) In section 403(c)(2)(C), strike out "disapproval" and insert in lieu thereof "disallowance".

(54) In section 404(c)(2) of the bill strike "participant"," and insert in lieu thereof "participant's".

(55) In the heading for section 405 of the bill, strike out "or" and insert in lieu thereof "BY".

(56) In section 405(a) of the bill, strike out "such fiduciary" in paragraphs (1) and (2) and insert in lieu thereof "such other fiduciary".

(57) In section 405(b)(1)(B) of the bill, insert a comma before and after "authorized by the trust instrument".

(58) In section 405(c)(2)(A)(ii) of the bill, strike out "of" after "establishment" and insert in lieu thereof "or".

(59) In section 405(c)(3) of the bill strike "plan's" the second time it appears.

(60) In section 406(b)(2) of the bill insert "in" before "any".

(61) In section 407(a)(4)(A) strike "19679" and insert in lieu thereof "1979".

(62) In section 407(d)(3)(B) of the bill, strike out "the expiration of one year after the effective date of this part" and insert in lieu thereof "January 1, 1976".

(63) In section 407(d)(4) of the bill strike "the" the first time it appears and insert "The".

(64) In section 407(d)(4)(D) of the bill, strike out "such acquisition and retention complies" and insert in lieu thereof "the acquisition and retention of such property comply".

(65) In section 407(d)(5), strike out the semicolon after "stock".

(66) In section 408(b)(5) of the bill strike the dash after "State" and insert in lieu thereof a comma.

(67) In section 408(a)(5)(B) strike "parties-in interest" and insert in lieu thereof "parties in interest".

(68) In section 414(c)(5) of the bill strike the word "considear-tion" and insert in lieu thereof "consideration".

(69) In section 502(b)(2) of the bill strike "benefit" in the second sentence and insert in lieu thereof "benefits".

(70) In section 502(d)(2) of the bill strike the article "a" and insert in lieu thereof "the".

(71) In section 510 of the bill insert a comma after "title" the first time it appears.

(72) In section 514(c)(1) of the bill, insert after the period the following: "A law of the United States applicable to the District of Columbia shall be treated as a State law rather than a law of the United States."

SEC. 2. The Clerk of the House of Representatives, in the enrollment of such bill, shall make the following corrections:

(1) In section 411(a) of the Internal Revenue Code of 1954, which is added by section 1012(a) of the bill, strike out "trus" and insert in lieu thereof "trust".

(2) In section 411(a)(3)(D) of the Internal Revenue Code of 1954, as added by section 1012(a) of the bill, strike out "manadatory" and insert in lieu thereof "mandatory".

(3) In section 411(a)(5)(D) of the Internal Revenue Code of 1954, which is added by section 1012(a) of the bill, after "subsection" insert a comma.

(4) In section 411(b)(1)(A) of the Internal Revenue Code of 1954, which is added by section 1012(a) of the bill, strike out the next to last sentence.

(5) In section 411(b)(1)(E) of the Internal Revenue Code of 1954, which is added by section 1012(a) of the bill, strike out "the term years of service" and insert in lieu thereof "the term 'years of service' ".

(6) In section 411(b)(3)(E) of the Internal Revenue Code of 1954. which is added by section 1012(a) of the bill, after "subsection" insert a comma.

(7) In section 412(a) of the Internal Revenue Code of 1954, which is added by section 1013(a) of the bill, strike out "if at the end of" and insert in lieu thereof "if as of the end of".

(8) In section 4971(c)(3) of the Internal Revenue Code of 1954, which is added by section 1013(b) of the bill, strike out "means' " and insert in lieu thereof "means,".

(9) In section 404(a)(1)(C) of the Internal Revenue Code of 1954, which is added by section 1013(c) of the bill, strike out "Alternate transfer of terms.—" and insert in lieu thereof "Certain collectively-bargained plans.—".

(10) In section 413(c)(6) of the Internal Revenue Code of 1954, which is added by section 1014 of the bill, strike out "limitation pro" and insert in lieu thereof "limitation".

(11) In the item contained in section 1016(b)(2) of the bill relating to chapter 43 of the Internal Revenue Code of 1954, strike out "qualifid" and insert in lieu thereof "qualified".

(12) In section 1017(c)(1)(A) of the bill, strike out "Usual application waived.—" and insert in lieu thereof "Waiver of application.—".

(13) In section 1017(b)(1)(D)(i) of the bill, strike out "with a survivor annuity for the life of his spouse".

(14) In section 1017(a)(2)(B) of the bill strike out "Interim law granting waiver of underfunding.—" and insert in lieu thereof "Waiver of underfunding.—".

(15) In section 1017 of the bill, at the end of subsection (c)(2) add the following subparagraph:

"(C) LABOR ORGANIZATION CONVENTIONS.—In the case of a plan maintained by a labor organization, which is exempt from tax under section 501(c)(5) of the Internal Revenue Code of 1954, exclusively for the benefit of its employees and their beneficiaries, section 412 of such Code and other amendments made by this part to the extent such amendments relate to such section 412, shall be applied by substituting for the term 'December 31, 1975' in subsection (b), the earlier of—

"(i) the date on which the second convention of such labor organization held after the date of the enactment of this Act ends, or

"(ii) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subparagraph (A) or (B) be substituted."

(16) In section 401(a)(14) of the Internal Revenue Code of 1954, which is added by section 1021 of the bill, strike out the matter appearing after subparagraph (C) of such section 401(a)(14) and insert in lieu thereof the same matter flush with the paragraph margin of such paragraph (14).

(17) In section 1021 of the bill, strike out subsection (g).

(18) In subsection 6057(g) of the Internal Revenue Code of 1954, which is added by section 1031(a) of the bill, strike out "toadministration" and insert in lieu thereof "to administration".

(19) In section 6652(e)(2) of the Internal Revenue Code of 1954, which is added by section 1031(b)(1) of the bill, strike out "therfor (determined with" and insert in lieu thereof "therefor (determined without".

(20) In section 7476(b)(2) of the Internal Revenue Code of 1954, which is added by section 1041(a) of the bill, strike out "plead" and insert in lieu thereof "plead-".

(21) In the section caption of section 7802 of the Internal Revenue Code of 1954, which is added by section 1051(a) of the bill, after "ORGANIZATIONS" insert a closing parenthesis.

(22) In section 408(d)(3)(ii) of the Internal Revenue Code of 1954, which is added by section 2002(b) of the bill, strike out ", other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan," and insert in lieu thereof "(other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)".

(23) In section 408(d)(5) of the Internal Revenue Code of 1954, which is added by section 2002(b) of the bill, strike out "a qualified" and insert in lieu thereof "an".

(24) In section 408(i) of the Internal Revenue Code of 1954, which is added by section 2002(b) of the bill, strike out "section 408(b)" and insert in lieu thereof "subsection (b)".

(25) In the last sentence of section 402(a)(5) of the Internal Revenue Code of 1954, which is added by section 2002(g)(5) of the bill, strike out "annuity plan of any" and insert in lieu thereof "annuity plan if any".

(26) In section 4975(d)(3)(B) of the Internal Revenue Code of 1954, as added by section 2003(a) of the bill, after "collateral" insert "which".

(27) In section 4975(d)(8) of the Internal Revenue Code of 1954, as added by section 2003(a) of the bill strike out:

"(8) any transaction between a plan and

"(A) a common or collective trust fund"

and insert in lieu thereof the following:

"(8) any transaction between a plan and a common or collective trust fund".

(28) In the last sentence of section 4975(d) of the Internal Revenue Code of 1954, as added by section 2003 of the bill, strike out "shareholder—employee" and insert in lieu thereof "shareholder-employee".

(29) In the last sentence of section 4975(e)(2) of the Internal Revenue Code of 1954, as added by section 2003(a) of the bill, strike out "The Secretary" and insert in lieu thereof "The Secretary or his delegate".

(30) In section 4975(e)(7)(A) of the Internal Revenue Code of 1954, as added by section 2003(a) of the bill, strike out "401" and insert in lieu thereof "401(a)".

(31) In section 4975(f)(4) of the Internal Revenue Code of 1954, as added by section 2003(a) of the bill, strike out "paragraphs (2), (11), and (12)," and insert in lieu thereof "paragraphs (2) and (10)".

(32) In section 4975(i) of the Internal Revenue Code of 1954, as added by section 2003(a) of the bill, strike out "section 3002 of the Employment" and insert in lieu thereof "section 3003 of the Employee".

(33) In section 415(a)(2) of the Internal Revenue Code of 1954, as added by section 2004(a)(2) of the bill, strike out "405," and insert in lieu thereof "405(a),".

(34) In section 415(d)(1)(B) of the Internal Revenue Code of 1954, as added by section 2004(a)(2) of the bill, strike out "sub ection" and insert in lieu thereof "subsection".

(35) In section 2004(a)(3)(A) of the bill after "defined" insert "benefit".

(36) In section 2004(d)(2) of the bill, strike out the last sentence.

(37) In section 402(e)(4)(B) of the Internal Revenue Code of 1954, as amended by section 2005(a) of the bill, strike out "distributed" and insert in lieu thereof "distribution".

(38) In section 3001(c) of the bill strike out "paragraph (2)" and insert in lieu thereof "subsection (b)(2)".

(39) In title III of the bill, strike out section 3004(a) and insert in lieu thereof the following:

"SEC. 3004. (a) Whenever in this Act or in any provision of law amended by this Act the Secretary of the Treasury and the Secretary of Labor are required to carry out provisions relating to the same subject matter (as determined by them) they shall consult with each other and shall develop rules, regulations, practices, and forms which, to the extent appropriate for the efficient administration of such provisions, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden of compliance with such provisions by plan administrators, employers, and participants and beneficiaries."

(40) In section 3004(b) of the bill, strike out "with or without reimbursement".

(41) In section 3032(d)(8) of the bill strike out "hall" and insert in lieu thereof "shall".

(42) In section 4001(a)(2) of the bill strike out:

"(B) the second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such plan year;"

and insert in lieu thereof:

"(B) the second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions made under that plan for each such year;".

(43) In section 4002(a)(3) of the bill strike out "charged by the corporation under section 4007" and insert in lieu thereof "established by the corporation under section 4006".

(44) In section (h)(2) strike out "nomination" and insert in lieu thereof "appointment".

(45) In section 4003 of the bill, after subsection (e)(5), insert the following new subsection:

"(f) Any participant, beneficiary, plan administrator, or employee adversely affected by any action of the corporation, or by a receiver or trustee appointed by the corporation, with respect to a plan in which such participant, beneficiary, plan administrator or employer has an interest, may bring an action against the corporation, receiver, or trustee in the appropriate court. For purposes of this subsection the term 'appropriate court' means the United States district court before which proceedings under section 4041 or 4042 of this title are being conducted, or if no such proceedings are being conducted the United States district court for the district in which the plan has its principal office, or the United States district court for the District of Columbia. The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy."

(46) In section 4004(b)(1) of the bill strike out "determines that it would not be" and insert in lieu thereof "determines that such approval would not be".

(47) In section 4004(b)(2) of the bill, strike out "special".

(48) In section 4004(d) of the bill strike out "by the corporation or the court, respectively." and insert in lieu thereof "by either the corporation or the court.".

(49) In section 4005(b)(1)(D) of the bill strike out "collected under section 4067" and insert in lieu thereof "under subtitle D".

(50) In section 4006(a)(5) of the bill, strike out "enacement" and insert in lieu thereof "enactment".

(51) In section 4006(a)(6) of the bill, strike out "assest" and insert in lieu thereof "assets".

(52) In section 4022(b)(6)(A)(ii) of the bill, strike out "interests" and insert in lieu thereof "interest".

(53) In section 4042(d)(1)(B) of the bill, strike out "part 4 of subpart B" and insert in lieu thereof "part 4 of subtitle B".

(54) In section 4045(b)(1) of the bill, strike out "thet" and insert in lieu thereof "the".

(55) In the second sentence of section 4047 of the bill, strike out "plan administrator control" and insert in lieu thereof "plan administrator of control".

(56) In section 4061 of the bill, strike out "subtitle C" and insert in lieu thereof "subtitle B".

(57) In section 4062(d)(3) of the bill, strike out "merger or" and insert in lieu thereof "merger".

(58) In section 4063(c)(2) of the bill, after "withdrawal" insert a comma.

(59) In section 4063(c)(3)(C) of the bill, strike out "law" and insert in lieu thereof "plan".

(60) In section 4063(e) of the bill, strike out "corporations" and insert in lieu thereof "corporation".

(61) In section 4068 of the bill, strike out subsection (b) and insert in lieu thereof the following:

"(b) The lien imposed by subsection (a) arises on the date of termination of a plan, and continues until the liability imposed under section 4062, 4063, or 4064 is satisfied or becomes unenforceable by reason of lapse of time."

(62) In section 404(g) of the Internal Revenue Code of 1954, as added by section 4081(a) of the bill, strike out "(G)" and insert in lieu thereof "(g)".

(63) In section 4082(b) of the bill strike out the second sentence and insert in lieu thereof the following: "The corporation shall not pay benefits guaranteed under this title with respect to a plan described in the preceding sentence unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this title or for the purpose of avoiding the liability which might be imposed under subtitle D if the plan terminated on or after the date of enactment of this Act."

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent that the concurrent resolution be considered as read and printed in the Record.

Mr. BAUMAN. Mr. Speaker, reserving the right to object, will the gentleman from Oregon give us some explanation of what the concurrent resolution does before we permit its consideration under unanimous consent?

Mr. ULLMAN. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I certainly will.

Mr. ULLMAN. This is the concurrent resolution that I spoke about earlier that deals primarily with technical corrections to the bill. This is a procedure that is used quite often on technical bills, but it also corrects the one substantive matter by removing from the conference report the language of section 1021(g) which was a matter that dealt with the integration between the private pension program and the social security system.

Now, this concurrent resolution will deal with that matter by removing it from the conference report.

Mr. BAUMAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

[From the Congressional Record—Senate, Aug. 22, 1974]

Authorization for Clerk of the House of Representatives To Make Corrections in the Enrollment of H.R. 2

Mr. Williams. Mr. President, I send to the desk a message from the House of Representatives on House Concurrent Resolution 609, and ask that it be laid before the Senate.

The Presiding Officer. The Chair lays before the Senate a message from the House, which the clerk will state.

The legislative clerk read as follows:

[The complete text of H. Con. Res. 609 appears on pp. 4722–4730.]

Mr. Williams. Mr. President, I ask unanimous consent that the Senate proceed to its immediate consideration.

The Presiding Officer. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The Presiding Officer. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 609) was agreed to.

Mr. Javits. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. Williams. I move to lay that motion on the table.

The Presiding Officer. The question is on the motion to table.

Mr. Curtis. Mr. President, I am in favor of the concurrent resolution, but, for the record, would the distinguished chairman of the Committee on Labor and Public Welfare tell us what it does?

The Presiding Officer. The Chair reminds the Members that a motion to table is not debatable.

Mr. Javits. Mr. President, I withdraw the motion.

The Presiding Officer. There is pending the motion to reconsider.

Mr. Curtis. Would the distinguished chairman tell us briefly what this concurrent resolution does?

Mr. Williams. First of all, it corrects a number of clerical errors that were made in the conference report on H.R. 2, the pension reform legislation.

In addition, it makes one substantive change, by removing from the conference report the language of section 1021(g), which deals with integration between private pension programs and the Social Security System.

Mr. Curtis. It eliminates that entirely?

Mr. Williams. Yes. I might explain further what this change involves.

Many of us have received telegrams expressing concern about one of the provisions in the conference report on the Employee Retirement Security Act of 1974. I am referring to section 1021(g), which appears on pages 131 and 132 of the conference report.

This provision would provide that until July 1, 1976, pension plans cannot increase their level of integration of social security with private pension plans by taking into account changes in the social security wage base or in social security benefit levels since 1971. We have been told that this will greatly increase the costs of private pension plans, something that I am sure none of the Senators would like to see occur. This is particularly true if these increased pension costs result in the termination of private pension plans. Certainly that is not the intent of this legislation which is designed to improve and encourage the expansion of private pension plans.

Personally. I am not sure that those who tell us that their funding costs will be substantially increased because of the 2-year freeze provided in this provision are correct in their analysis. If there are substantial increases in costs, I believe that this arises from the belief on the part of the private pension plan actuaries involved that once this freeze occurs there will be no further integration of social security and private pension plans thereafter. This certainly was not the intent of the 2-year freeze included in the bill.

I recognize, however, that this has caused a great deal of concern, and I personally do not want to detract from this fine piece of legislation by the creation of any confusion on this issue. For that reason I have consulted with the conferees, and they have indicated a willingness to delete this provision from the conference report. The technique for doing this is by action on a concurrent resolution today, instructing the enrolling clerk of the House to make certain technical and clerical corrections needed in the conference report before enrollment of the bill. In addition, in this same concurrent resolution would be a provision for the deletion of this provision relating to the integration of social security and private pension plans.

The conferees recognize, however, that the integration of social security and private pension plans represents a difficult problem which needs further study and attention in the future. For that reason, we recommend that the Internal Revenue Service issue no further regulations on integration of social security and pension benefits at least until June 30, 1975. This is the statement which appeared in the House Ways and Means Committee report on the pension bill and represents what I believe is a minimum action which should be taken at this time with regard to this issue of integration of social security and pension benefits. A statement outlining what I have indicated to you is available to the Senators and can be obtained from the pages.

I hope that this represents a satisfactory interim solution to the problem for the Senators. Again, I can assure you that this matter will be studied very carefully by our staffs and I understand it will be studied by the tax committees in the period ahead.

Mr. CURTIS. I have no further questions.

Mr. JAVITS. Mr. President, if the Senator will yield, the effect of that is to use the present effective social security rates instead of old social security rates which was provided in the conference report.

Mr. CURTIS. I have no objection.

Mr. JAVITS. Mr. President, I move to lay the motion to reconsider on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

Mr. JAVITS. Mr. President, I made the motion to reconsider.

Mr. WILLIAMS. I made the motion to table.

The PRESIDING OFFICER. The question is on the motion to table.

The motion was agreed to.

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974—CONFERENCE REPORT

Mr. WILLIAMS. Mr. President, I submit a report of the committee of conference on H.R. 2, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The second assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2) to provide for pension reform, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

[The conference report appears on pp. 3923–4300.]

Mr. WILLIAMS. Mr. President, I am happy to report that after long and numerous meetings of the conferees on H.R. 2, we are able to bring before the Senate a conference agreement which has been unanimously adopted, and which, for the first time, will safeguard the pension expectations of American workers.

While the conference agreement takes the form of a substitute for the separate versions passed by the House and Senate, I am satisfied that it provides the degree of protection for pension plan participants and their beneficiaries that the Senate endorsed when it adopted such legislation by a vote of 93 to 9 on September 19, 1973.

Indeed, the conference substitute embodies all of the essential concepts which were developed and approved in the Senate in our effort to remedy the abuses and shortcomings that have been found to exist in the private pension system.

Those concepts were the outgrowth of a 3-year, in-depth study of the private pension system begun during the 91st Congress by the Labor and Public Welfare Committee pursuant to Senate resolution.

Mr. JAVITS. Will the Senator yield?

Mr. WILLIAMS. Yes.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the vote on the conference report on private pensions occur at the hour of 1:45.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. MANSFIELD. I thank the Senators.

Mr. WILLIAMS. This study clearly established that too many workers, rather than being able to retire in dignity and security after a lifetime of labor rendered on the promise of a future pension, find that their earned expectations are not to be realized.

Our study also demonstrated the kinds of remedial legislation needed to deal with shortcomings in the pension system, and the feasibility of such measures.

In this connection, the conference substitute, which, with certain limited exceptions reaches all private retirement plans established by employers or unions whose business or members are in, or affect, interstate commerce, deals with the following areas of concern:

First. Limiting the maximum length of time that an employee may be required to be in service before becoming a participant in a pension plan maintained by his employer for his category of employment.

Mr. JAVITS. Mr. President, will the Senator mind yielding to me for an instant? I will explain why.

I think this bill is so vital that we ought to have a quorum and let the Members know it is on the floor for consideration.

Would the Senator mind if we had a quorum call, which would be for not more than a few minutes?

I ask unanimous consent that the Senator may resume the floor as soon as the quorum is over.

Mr. WILLIAMS. I have no objection.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that further proceedings under the call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, returning to a brief discussion of the provisions of the conference report, the second point I would like to make is that we in this report are assuring that every employee who participates in a pension plan will, within a reasonable number of years, earn a nonforfeitable or "vested" right to a pension upon reaching retirement age, whether or not he leaves the participation employment before reaching that age.

Requiring that contributions are made to pension plans at a rate sufficient to provide reasonable assurance that adequate funds will be on hand to meet all vested benefit claims.

Providing an insurance system which will protect employees and their beneficiaries in their vested pension rights, despite premature plan termination.

Imposing strict fiduciary obligations upon those who exercise management or control over the assets or administration of an employee pension or welfare plan, as well as the provision of adequate reporting and disclosure requirements.

Providing administrative and judicial remedies, available to both the government and participants, which will assure compliance with the foregoing substantive provisions.

In addition, the conference substitute provides certain amendments to existing law with respect to the tax treatment of pension plans, including tax incentives for the establishment of individual retirement accounts for those who are not otherwise covered by a pension plan.

Before discussing the provisions of the conference substitute in further detail, I want to mention the contributions of those members who have been instrumental in bringing this measure to fruition.

Special tribute should be accorded Senator Javits, the ranking minority member of the Labor and Public Welfare Committee, who has been my partner throughout this entire endeavor, and whose dedi-

cation to the objective of pension reform and creative approach to solving the problems we have encountered have had a major impact on this legislation.

Great credit is also due to Senator Long and his colleagues on the Finance Committee, including Senator Bentsen, Senator Bennett, and Senator Curtis, as well as Senator Nelson, a member of both our committees, and who, along with Senator Bentsen, made such a major contribution to working out the differences in approach between our two committees. In helping to fashion the bill that passed the Senate and the substitute that has now emerged from conference, these distinguished members have demonstrated how effectively two committees can join together in achieving a common goal.

I also acknowledge the indispensable role of these Members of the House of Representatives, including Congressman Perkins, the chairman of the Labor and Education Committee, and his colleagues, Mr. Dent and Mr. Erlenborn who championed the cause of pension reform in that body.

I should mention, of course, that in the House too, another committee was involved. Mr. Ullman from the Committee on Ways and Means was a leader in the joint effort to bring this measure to its final state in the conference report. Without the concern and effort of these and other Members of both Houses, enactment of this legislation, even though long overdue, would still be no more than a distant goal.

PARTICIPATION AND VESTING

One of the objectives of our pension reform effort has been to broaden the number of employees who are eligible to participate in their employer's pension plan, by prohibiting such plans from imposing unduly restrictive age and service requirements as conditions to participation. Under the conference substitute, the general rule is that no plan would be allowed to require as a condition of eligibility an age greater than 25, or a period of service longer than 1 year, whichever is later. Moreover, in the case of an employee who begins his service before age 25, there is to be a "look back" of up to 3 years' credit once he qualifies for participation. In general, 1,000 hours of work during a 12-month period will constitute a "year of service," although shorter periods may be provided by regulations for certain seasonal industries. In addition, the term "hours of service" is to be determined under regulations of the Secretary of Labor, and it is expected that the Secretary may take into account the particular problems of different plans and industries in providing ways in which hours of service may be computed, including the use of earnings data.

Another major objective of this legislation is to reduce the loss of pension rights by employees who terminate their employment prior to retirement age, by requiring plans to grant covered employees nonforfeitable or "vested" rights to benefits after a specified minimum period of service. Employees receiving such vested rights would be entitled to receive pension benefits upon attaining retirement age, even though they had previously left the employment covered by the plan.

With respect to those plans which provide for employee contributions, the conference substitute would require, as did the Senate bill,

full and immediate vesting of those benefits which are attributable to such contributions. With regard to employer contributions, the conference agreement requires each plan to select one of three vesting formulas—although a plan could, of course, provide a vesting formula which is more favorable to employees than any of the statutory options. One of the three options is the graded vesting approach which was developed in the Senate. Under this option, each participant would be vested in at least 25 percent of his accrued benefit from the employer's contributions after 5 years of service, plus an additional 5 percent for each of the next 5 years of service, and an additional 10 percent for each year thereafter, with 100 percent of the accrued benefit becoming vested after 15 years. A second alternative available to each plan would be to provide each employee with 100 percent vesting in accrued benefits after not more than 10 years in service. The Senate bill provided this option only for existing plans which now use it, but we agreed with the House to make it available to all plans.

A third vesting option was provided in the House bill—the so-called rule of 45—which would provide an employee with 50 percent vesting when the sum of his age and years of service equals 45—subject to a minimum service requirement of 5 years, with 10 percent additional vesting for each year thereafter. Some of the Senate conferees were extremely reluctant to accept the rule of 45 as an option because of our concern that it would unduly delay any vesting for employees starting at a very early age, and that employers using this formula might be reluctant to hire workers who are approaching middle or older age.

We eventually agreed to accept this provision, however, subject to certain important qualifications. One is that any employee under this formula would be 50 percent vested after 10 years and 100 percent vested after 15 years' service, regardless of age. Another qualification is that despite the general rule in the bill that years of service before age 22 may be disregarded for vesting purposes, an employer using the rule of 45 may not so disregard any year of service during which the employee was a participant. In addition, the conferees provided that one of the subjects to be studied and reported on within 2 years by the pension task force established by this legislation is the effect of this or any other vesting formula upon the employment opportunities of older workers. If patterns of age discrimination appear to develop through the use of this formula, we will, of course, want to consider appropriate amendments to this legislation.

As I have stated, the vesting provisions apply to whatever benefit an employee has accrued under a plan. It is, therefore, important to assure that a plan's accrual formula is not inconsistent with the statutory purpose reflected in the bill's vesting provisions. A basic concern was that a plan not be permitted to use an accrual formula which is so weighted in favor of the later years of service as to subvert the statutory intent to provide meaningful vested rights to those who have relatively few years of service. In this respect, the conferees have adopted a combination of the accrual rules found in the Senate and House bills.

In the case of a plan other than a defined benefit plan, the accrual benefit is to be the balance in the individual employee's account. In the case of defined benefit plans, the rules are somewhat technical, and

since they are fully described in the statement of managers, I will only mention them briefly. One is essentially the Senate rule contained in the Senate bill—the so-called pro-rata rule—under which the accrued benefit at any time is proportionate to the number of years of service over the number of years of service the employee would have if he continued his employment until normal retirement age.

Another alternative rule, referred to as the "133⅓-percent test," would permit a plan to adopt any accrual formula it chooses so long as the rate of accrual in any year is not more than 133⅓-percent of the rate in any earlier year—thus limiting the amount of "backloading" which we were concerned might undercut the effect of the vesting rules.

In applying the 133⅓-percent test, social security benefit levels for future years and other factors relevant in computing benefits, including salary deferentials, are to be held constant. With respect to compensation-related fluctuations in rates of accrual or, in an appropriate case, fluctuations on account of differing rates of contribution, it is the intention that such fluctuations be disregarded for purposes of applying the 133⅓-percent test. Such matter, of course, will be subject to regulations of the Secretary of the Treasury which will insure that the application of these principles are consistent with the purposes of the 133⅓-percent limitation.

The third option, the "3-percent test," is provided for those plans—particularly so-called "flat benefit" plans—to which the other formulas do not have ready applicability. Under the 3-percent rule, each participant would accrue for each year of service, at least 3 percent of the benefit which is payable at normal retirement age to a participant who begins on the earliest possible entry age.

The participation and vesting provisions will become effective for plan years beginning after the date of enactment, except that in the case of plans which were in existence on January 1, 1974, such provisions will become effective for plan years beginning after December 31, 1975. However, such existing plans may obtain a reasonable delay of these requirements upon a prescribed showing of economic hardship.

It is to be noted that under the conference substitute, upon the effective date of these provisions, workers will generally be entitled to have their service prior to the effective date counted, both for purposes of determining their place on the applicable vesting schedule and for calculating the years of accrued benefits to be vested. Such entitlement will be subject to applicable break-in-service rules, and to the conditions that they have at least 3 years of service after December 31, 1970.

There are several other features of our participation and vesting provisions that should be mentioned at this point. One is that this legislation attempts to take account of the problem of vesting in certain highly mobile fields of work, including engineering and scientific activity. It, accordingly, modifies the antidiscrimination provisions of existing tax law to allow an employer to establish a separate plan for highly mobile employees, trading off higher benefits for more rapid vesting than under the employer's plan for other employees. In addition, the Secretary of Labor is charged with studying ways to protect such employees who work under Federal contracts against loss of re-

tirement benefits, and to develop proposed modifications of Federal procurement regulations for this purpose. The conferees accepted the provision of the Senate bill which would make such regulations effective unless rejected by either House within 120 days after their submission to Congress.

Another significant feature of the conference agreement, originally contained in the Senate bill in order to protect spouses of deceased participants, would require each plan that provides for a retirement benefit in the form of an annuity to provide for a joint and survivor annuity for married participants, which, upon reaching retirement, may be waived only if the participant so elects in writing.

With respect to allocating the additional costs of providing the new required survivor's option, the conference substitute would permit a plan to adjust the joint and survivor option benefit to an actuarial equivalent of the single life annuity. As is made clear in the statement of managers, the plan is not required to "subsidize" joint and survivor benefits, and may make reasonable actuarial adjustments, either on an individual case-by-case basis, or in the aggregate, based on the plan's overall experience.

It is contemplated by the conference agreement that where changes must be made in existing collective bargaining agreements in order to bring a plan into compliance with the act's requirements, the parties will be required to bargain in good faith over such changes. However, any reopening of a collective bargaining agreement for this purpose would not require the parties to bargain over matters unrelated to the modifications required by this act, provided they would not otherwise be required to do so.

The conference substitute provides that subject to regulations of the Secretary of Labor, a plan may be permitted to suspend the payment of pension benefits when a retiree returns to work for the employer who is paying such benefits. In addition, a multiemployer plan would be permitted to provide, subject to such regulations, that payment of benefits may be suspended when a retiree returns to work in the same industry, in the same trade or craft, and in the same geographical area as that covered by the plan. The type of suspensions contemplated by this provision are those which prevent plan assets from being used to pay retirement benefits to persons who have, in fact, returned to work for employers covered by the plan. Also contemplated are provisions designed to protect participants against their pension plan being used, in effect, to subsidize low-wage employers who hire plan retirees to compete with, and undercut the wages and working conditions of employees covered by the plan.

It is expected that regulations issued by the Secretary would not permit use of suspension provisions where they are not necessary to deal with the types of situations I have described. Moreover, while such regulations may, as appropriate to particular industry conditions, such as those characterized by casual and intermittent employment, provide that benefits can be suspended not only for the exact number of days or hours of employment, but for a reasonable period of time during which the employment occurs, such regulations should preclude such suspensions which are not necessary to effectuate the policies I have mentioned.

PORTABILITY

As a complement to the vesting provisions, the Senate bill had provided for a voluntary portability system, under which participating plans and employees could agree to transfer vested benefits from one plan to another through a central clearinghouse. While the conference substitute does not include provision for the central clearinghouse, it does provide, in order to facilitate portability, that when an employee leaves employment covered by a plan, the value of vested benefits can—if so agreed by the employee and the plan—be transferred on a tax-free basis to an individual retirement account, where it can remain until retirement age is reached, or until the employee enters another plan which is willing to receive a transfer of such amount, again on a tax-free basis, and to give the employee appropriate credit in the new plan.

The Department of Labor is to provide individuals with actuarial assistance in evaluating whether benefits in the new plan are being provided in an appropriate amount. Appropriate measures for providing for further portability of pension rights between different plans are among the studies to be undertaken by the joint pension task force, and reported on within 2 years.

Of particular importance in connection with the preservation of vested rights are provisions in the conference substitute which are intended to assure that each participant will be able to obtain information regarding the status of any benefits he may have earned. Thus, under sections 105 and 209 of the labor provisions of the bill, and section 1031 of the tax portion, each plan administrator must annually notify not only the Secretaries of Labor and Treasury of those participants who left employment during the year with deferred vested rights, but must also provide such information to each such participant.

In addition, each participant may request once each year a statement from the plan administrator of the total benefits, both vested and nonvested, which he has accrued, and the earliest date on which his benefits will become nonforfeitable. Such requirements are subject to regulations and variances issued by the Secretaries of Labor and Treasury. In exercising their discretion under these provisions, the Secretaries may take into account the particular problems that multiemployer plans may face in assembling the necessary data from a number of employers, and may prescribe appropriate alternative methods of meeting these requirements, as long as the objective of providing this essential information to participants is fulfilled.

In this connection, it may be noted that the Social Security Administration has in the past filled a most useful service for many multiemployer plans in furnishing, pursuant to employee authorizations, necessary employment data; it is expected that social security will continue to meet this need and that such sources of employment information may be considered by the secretaries in fashioning appropriate recordkeeping requirements for such plans.

It should be noted that the conference agreement in fact places additional responsibility upon social security, for the tax portion of the bill—sections 1031 and 1032—provides that the information concerning employees who separate with deferred vested rights must be forwarded to social security by the Treasury Department. Thereafter, whenever social security finds any employee to be entitled to social

security benefits or when it is otherwise requested by an employee, it shall provide appropriate notification of the vested pension rights the employee has earned at his various places of employment. In this way, it is intended that every employee will have a means of keeping apprised of the pension rights he may have earned over a lifetime of employment.

FUNDING

One of the objectives of pension reform legislation has been to require plans to fund their obligations by regularly setting aside sufficient amounts to meet their current costs and to amortize their past service liabilities. The purpose is to provide reasonable assurance that pension plans will have sufficient funds to pay their obligations to participants and beneficiaries when they come due.

Under the conference agreement, all plans covered by the funding requirements and which come into existence after January 1, 1974, must amortize past service liabilities over no more than 30 years in the case of single employer plans, and 40 years in the case of multiemployer plans. However, all plans in existence on January 1, 1974, will have 40 years to amortize those past service liabilities which are unfunded on the effective date of these provisions. Experience losses are to be amortized over 15 years in the case of single employer plans, and over 20 years in the case of multiemployer plans.

The bill provides that if an employer would incur substantial business hardship, and if application of the funding requirements would be adverse to the plan participants, the plan may obtain a waiver of an annual contribution—but such waived amounts must be amortized over not more than 15 years. In addition, a plan may, upon a prescribed showing of economic hardship, obtain an extension of the period for amortizing past service liabilities and experience losses of up to 10 additional years.

As a further form of relief to plans which are unable to meet the funding requirements in a particular year, the bill would permit a plan amendment to reduce accrued—but not vested—benefits after the close of the plan year to which the amendment applies, but only if the amendment is made within 2½ months after the end of the plan year in the case of single employer plans, and within 2 years of the close of the plan year in the case of multiemployer plans.

Any such retroactive plan amendment is subject to action by the Secretary of Labor, and it is the conferees' expectation that any such amendment which would reduce accrued liabilities would be disapproved unless it meets the various hardship conditions specified in the bill, and the Secretary of Labor determines that the funding deficiency cannot be avoided through any of the other alternatives provided by the bill.

Under the conference agreement, the funding requirements will generally become effective for the first full plan year beginning after the date of enactment. For plans already in existence on January 1, 1974, however, the funding requirements will become applicable for plan years beginning after December 31, 1975, except that in the case of collectively bargained plans existing on January 1, 1974, the effective date would be postponed until the termination of the existing contract, but not later than plan years beginning after December 31, 1980.

TERMINATION INSURANCE

While the funding provisions are designed to assure that sufficient assets are available to a plan to pay benefits when due, experience has shown that participants and beneficiaries, even in well-funded plans, may lose vested rights when a plan terminates because of plant closure or other reasons.

Accordingly, the conference substitute, as did the Senate and House bills, establishes an insurance program to protect employees against the loss of vested benefits in the event of plan termination. The program would be administered by a pension benefit guaranty corporation established within the Department of Labor. Its board of directors—consisting of the Secretaries of Labor, Commerce, and Treasury—is to establish policy, while the Secretary of Labor, as chairman, will be responsible for overall supervision of the corporation's personnel organization, and budget practices.

Also provided is a seven-member advisory committee to advise the corporation with respect to such policies as the investment of funds, appointment of trustees for terminating plans, the liquidation or continued operation of terminated plans, and other such matters.

In general, where assets of a terminated plan are insufficient, vested pension benefits will be covered by the insurance program, subject to a limit of the lesser of 100 percent of the employee's wages during his highest-paid 5 years, or $750 monthly. This limitation will be adjusted to reflect changes in the social security base. Where the benefits result from a plan provision which has been in effect for less than 5 years on the date of termination, insurance coverage will be phased in at the rate of 20 percent a year, until the benefit is fully covered after 5 years.

To pay for the costs of the insurance program, all covered plans will pay an initial per-capita premium for the first year after enactment; during the second year, each plan will have optional premium formulas to select. In subsequent years, the corporation may set premiums in accordance with standards provided in the legislation which will reflect equitably the experience gained since enactment. In addition, the corporation will have authority to borrow up to $100 million from the Federal Treasury.

The legislation provides procedures under which plans may be terminated, including provisions for court supervision of such terminations, and the appointment of trustees to administer plan assets. It is expected that in appointing trustees, the courts will give weight to the recommendations of the corporation, which, in turn, will be generally advised by the advisory committee.

In order to safeguard multiemployer plans, the substitute includes the special procedures of the Senate bill designed to protect the plan upon the withdrawal of a substantial contributor.

Since there would be a possibility of abuse by solvent employers who terminate a plan and shift the financial burden to the insurance program, notwithstanding their own financial ability to continue funding the plan, the conference bill imposes liability on employers whose plans terminate, to reimburse the program for benefits paid by the corporation. This liability extends to 30 percent of the employer's net

worth. However, the bill does provide that employers will be permitted to exercise an option to obtain additional insurance to cover such contingent liability.

In order to provide prompt and effective protection of the employees concerned, insurance coverage for plans established by single employers becomes effective for plans terminated after June 30, 1974. Coverage for multiemployer plans generally starts for terminations after December 31, 1977. However, to prevent hardship, the Pension Benefit Guaranty Corporation, subject to certain limitations, is given discretionary authority to provide benefits to employees covered by multiemployer plans which terminate after the date of enactment of the legislation and before January 1, 1978. However, such discretionary benefits cannot be paid if they would jeopardize the coverage of multiemployer plans terminated in 1978 and later years.

REPORTING AND DISCLOSURE

Reporting and disclosure requirements presently exist for all employee benefit plans, including both pension and welfare plans, under the Welfare and Pension Plans Disclosure Act of 1958. That act required, among other things, plan administrators to file with the Secretary of Labor, and to send to participants upon request, a description and annual report of the plan.

This new legislation would repeal the existing act and replace it with provisions requiring the reporting of more detailed information concerning the administration of plan assets and the payment of benefits, including the particulars of party-in-interest transactions and information concerning all large transactions. In addition, annual reports must include an audit by an independent qualified accountant, and an actuarial valuation of the plan's assets and liabilities. Plan participants would be entitled to receive a reasonably comprehensive summary of the major plan provisions, written so as to be understandable by the average plan participant.

The Secretary of Labor will be able to simplify the reporting requirements for plans involving fewer than 100 participants. He will also have authority to exempt any welfare plan from all or part of the reporting and disclosure requirements. In this regard, it may be noted that the definition of "welfare plan" in the conference substitute includes various types of plans—such as those providing apprenticeship or other training programs, day care centers, and the like—which were not expressly covered by the existing Welfare and Pension Plans Disclosure Act. While this expanded coverage will assure the applicability of the new fiduciary requirements to such plans, the Secretary need not subject all of these plans to the reporting requirements. Thus, those plans which have been exempt from reporting requirements in the past, might expect to remain so exempt, unless the Secretary finds it necessary to require such reporting in whole or in part.

The new reporting and disclosure provisions will generally go into effect on January 1, 1975, although the Secretary of Labor will be authorized to adjust the transition date between the old and new acts until the beginning of the first plan year of January 1, 1975.

FIDUCIARY REQUIREMENTS

Despite the value of full reporting and disclosure, it has become clear that such provisions are not in themselves sufficient to safeguard employee benefit plan assets from such abuses as self-dealing, imprudent investing, and misappropriation of plan funds. Neither existing State nor Federal law has been effective in preventing or correcting many of these abuses. Accordingly, the legislation imposes strict fiduciary obligations on those who have discretion or responsibility respecting the management, handling, or disposition of pension or welfare plan assets. The objectives of these provisions are to make applicable the law of trusts; to prohibit exculpatory clauses that have often been used in this field; to establish uniform fiduciary standards to prevent transactions which dissipate or endanger plan assets; and to provide effective remedies for breaches of trust.

Every covered plan would be required to be established in writing, and to provide for the appointment of "named fiduciaries" who will have authority to control and manage the administration and operation of the plan. In addition, plan assets will generally be required to be held in the form of a trust by trustees—with certain specified exceptions and with authority in the Secretary of Labor to provide additional exceptions for plans such as welfare plans.

The conference agreement applies the "prudent man" rule to the conduct of fiduciaries. While it forbids exculpatory clauses, the legislation does allow fiduciaries to allocate and delegate their responsibilities and to designate others to carry out the daily management of the plan. Such actions, however, must be provided for in the plan, and are subject to limitations stated in the bill.

The conferees also accepted the approach of the Senate bill in placing limitations upon the holding of plan assets in securities of the employer, or real property leased to the employer. Thus, in addition to the requirement of prudent diversification, the conference substitute prohibits a plan from holding or acquiring such investments to an extent greater than 10 percent of the plan's assets—the operative limit under the Senate-passed bill was 7 percent. Provision is made for the disposition, over a 10-year period, of such investments which presently exceed the 10 percent limit.

The bill prohibits fiduciaries from engaging in transactions involving the transfer of assets between the plan and parties in interest; or transactions in which the fiduciary deals with the assets of the plan for his own account, receives consideration from any party dealing with the plan, or acts on behalf of a party whose interests are adverse to those of the plan. While the House bill would have permitted the transfer of assets between the plan and a party-in-interest as long as the transfer was for adequate consideration, the Senate view has been that the adequate consideration test may not be sufficient protection against the temptations for wrongdoing inherent in these kinds of transactions, and the conferees agreed to accept the Senate view on this issue.

The conference substitute does provide specific exceptions from the prohibited transactions rules, similar to those contained in the Senate bill, for certain established practices which are regarded as consistent with the sound and efficient functioning of employee benefit plans, and

additional exceptions may be obtained administratively upon a showing that the transaction is in the best interest of the plan and its participants, that adequate safeguards are provided, and that the exception is administratively feasible.

One issue that has occasioned considerable interest relates to those situations where a fiduciary also provides other services to a plan, and may, because of his fiduciary position, be in a position to influence the extent or cost of the other service he provides. Some such multiple services are now commonly provided by banking, investment and other financial institutions, and may be quite beneficial to the plans utilizing them. Accordingly, the conferees have expressly permitted such services where it was possible to devise adequate statutory safeguards. In other areas, it was left to the affected plans or the providers of such services to seek administrative exceptions, subject to such conditions as the administering agencies believe are required to protect the interests of the plan and its participants.

An example are stock brokers, or their affiliates, who provide investment management services to a pension plan and at the same time, furnish brokerage services on the transactions which they direct as investment manager. Such a situation obviously presents the prospects of churning and other opportunities for wrongdoing at the expense of the fund. No statutory exemption was provided for such activity, but if it can be shown that adequate safeguards can be developed, the Secretaries of Labor and Treasury could grant an appropriate variance, provided that it were administratively feasible and in the interests of the plan and its participants.

While the insurance provisions of the conference substitute generally provide for the allocation of the assets of terminated pension plans, the fiduciary provisions state that the assets of terminated welfare plans shall be distributed in accordance with the terms of the plan, except as otherwise provided in regulations of the Secretary of Labor. These regulations might appropriately apply to partial terminations whereby, pursuant to collective bargaining, assets of a welfare plan are transferred to another employee benefit plan in order to reflect changes in industry conditions or the needs of the employees covered. It is expected that such a transfer could be permitted, provided the accrued benefits of participants are not impaired, and the transfer is in the best interests of the employees covered by the plans, even where the participants are not wholly identical.

ADMINISTRATION AND ENFORCEMENT

One of the important issues dealt with by the conferees was the allocation of responsibility between the appropriate administrative agencies for the administration and enforcement of the bill's substantive provisions. Under the conference substitute, a significant role will be accorded in the administration of the participation, vesting and funding standards to both the Department of Labor and, in the case of plans which seek tax qualification, to the Internal Revenue Service. In order to avoid duplication of effort on the part of the two agencies, the conference substitute delegates certain particular functions to one agency or the other. In addition, the bill provides guide-

lines for coordination of administration and enforcement between the two agencies.

Since it is probable that in view of the new requirements almost all pension plans will seek tax qualifications, the conference substitute, in effect, accords the basic responsibility with respect to participation, vesting and funding to the Internal Revenue Service, although the Secretary of Labor will have authority with regard to the granting of certain variances, for the promulgation of certain regulations, and for intervening in the tax qualification procedure in specified instances. In addition, the Secretary of Labor, on the request of participants, or the Secretary of the Treasury will be authorized to bring civil actions to require payment of benefits denied to any participant or beneficiary in violation of the participation, or vesting provisions of the act or to otherwise redress violations of such provisions.

Under the conference substitute, enforcement of the fiduciary provisions would primarily lie with the Secretary of Labor who would be empowered to bring civil actions to redress or restrain violations on the part of fiduciaries. He is also authorized to impose civil penalties on parties in interest who participate in prohibited transactions with welfare plans which are not subject to the tax qualification provisions of the Internal Revenue Code. However, the Internal Revenue Service would have responsibility for dealing with those who are "disqualified persons"—similar to the parties in interest defined in the labor portion of the conference substitute—with authority to impose excise taxes on violators.

In addition to being able to request the Secretary of Labor to bring suit on their behalf in cases where benefits are denied in violation of the act, individual participants and beneficiaries will also be able to bring suit in Federal court in such instances, as well as to obtain redress of fiduciary violations. In addition, participants and beneficiaries may bring suit to recover benefits denied contrary to the terms of their plan, and where such claims by participants or beneficiaries do not involve application of the substantive requirements of this legislation, they may be brought in either State or Federal courts of competent jurisdiction. It is intended that such actions will be regarded as arising under the laws of the United States, in similar fashion to those brought under section 301 of the Labor Management Relations Act.

It should be noted that prior to bringing an action to recover benefits from the plan, the participant or beneficiary would have the right to receive written notice from the plan of the special reasons his claim for benefits was denied; and, in addition, would be entitled to a full and fair review by the plan administrator of the decision to deny such benefits.

A further protection for employees is the prohibition against discharge, or other discriminatory conduct toward participants and beneficiaries which is designed to interfere with attainment of vested benefits or other rights under the bill, or to discourage the exercise of any rights afforded by the legislation. Either the employee or the Secretary of Labor may bring suit to redress such violations.

It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations,

thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law. Consistent with this principle, State professional associations acting under the guise of State-enforced professional regulation, should not be able to prevent unions and employers from maintaining the types of employee benefit programs which Congress has authorized—for example, prepaid legal services programs—whether closed or open panel—authorized by Public Law 93–95. The preemption provisions of the conference substitute shall generally become applicable on January 1, 1975.

INDIVIDUAL RETIREMENT ACCOUNTS AND PLANS FOR THE SELF-EMPLOYED

The conference substitute will amend existing tax law to provide, for the first time, that individuals who are not covered by any qualified pension plan may take a tax deduction for contributions to an individual retirement plan. Such deductions—which may begin in 1975—may be in an amount of up to 15 percent of earned income or $1,500, whichever is less. Such individual retirement accounts may be established by the individual himself, or by his employer or union.

In addition, the conference substitute liberalizes the existing limitations on contributions to H.R. 10 plans for the self-employed. Such limitations are increased from the present level of 10 percent of earned income up to $2,500 a year, to 15 percent of earned income up to $7,500 a year.

SPECIAL TRIBUTES TO STAFF WORK

Mr. President, I have already discussed the impressive contributions made by Members of both Houses to this legislation. I should note, however, that the development of the landmark pension reform legislation (H.R. 2), including the task of reconciling the different approaches of two committees of the Senate, and ultimately the differing views of the two Houses, has required a singular degree of skill and effort on the part of the respective committee staffs. No legislation in my experience has demanded the dedication and cooperation of so many staff members in both Houses of Congress, and I am most grateful for the fine work they have done.

Particular appreciation is due to my own staff mmebers, Mario T. Noto, staff director of the Labor and Public Welfare Committee, Robert E. Nagle, general counsel to our committee, Michael R. Schoenenberger, staff attorney, as well as Michael Gordon, the minority counsel to our committee.

Passage of this legislation is the end product of 3 years of study and development by the Senate Labor Committee staff. It was their dedicated efforts which helped to enlighten the public and the Congress to the need for reforms of our private retirement system.

Special thanks are due to contributions of the staff of the Senate Finance Committee members, including Robert Willan, counsel to the Finance Committee, Richard Fay of Senator Nelson's staff and David Allen of Senator Bentsen's staff.

A particular tribute must be reserved for the work of Laurence Woodworth and the other staff members of the Joint Committee on Internal Revenue Taxation, including Staff Counsels Herbert Chabot, Robert Blum, James Billinger, Robert Warden and Arthur Fefferman, Chief Economist.

I also wish to recognize the vital contributions of the staff of the House Education and Labor Committee, who worked closely with the Senate staff in developing the conference substitute, including Donald Baker, General Counsel as well as Vance Anderson, Russell Mueller, Charles Sheerin and Robin Reed.

The drafting of this complex measure required the development of special techniques and the devoted efforts of the staff of the Legislative Counsel of both the Senate and House. For their efforts—which all too often go unrecognized—I wish to commend Daniel Murray and Lloyd Ator of the Senate Legislative Counsel, and Robert Nordhaus and Pope Barrow of the House Legislative Counsel.

PENSION REFORM—A LEGISLATIVE TRIUMPH

Mr. JAVITS. Mr. President, 2 weeks ago we witnessed a singular act in American history—the resignation of a President of the United States. Many were moved to tears over the indescribable sadness of the occasion—the fall from grace of the highest elected official in our Nation. Yet, we were also moved by the awesome triumph of our constitutional form of government and by the foresight of our Founding Fathers who were inspired to design a system capable of withstanding and solving this unprecedented crisis in our Government. The message of that event to all was that the American Constitution is alive and well and that this Nation under law will be more unified and determined than ever to pursue the great objectives for which this Republic has been renowned since its inception.

There is another message that should also be conveyed and that is that the Congress is also alive and well. I believe that the last few years have laid the foundation for a renaissance in the exercise of congressional prerogatives. The proof of this renaissance lies not only in the superior work of the House Judiciary Committee, as they considered articles of impeachment, but also in the enactment of such original and vital legislation as the war powers bill and congressional budget reform. And now—to add to the list of first-rate achievements by this Congress, we have before us the pension reform bill, worked out after several months by a unique conference of four committees of the House and Senate—the Senate Labor Committee, the Senate Finance Committee, the House Labor Committee, and the House Ways and Means Committee—and worked out, I might add, while the national drama of impeachment and resignation was being played out at its height.

For the pension reform bill is the greatest development in the life of the American worker since social security. For the first time in our history most workers will be able truly to retire at retirement age and to live decently on their social security, and private pensions.

The conference report on the pension bill is the product of a herculean effort extending over many years. Before describing some of the remarkable aspects of this legislation, I would like briefly to retrace

the steps which led us to this final chapter on pension reform—which, like medicare took over 10 years to bring to fruition.

Mr. President, the growth and development of the private pension system in the United States during the past three decades has been substantial. Yet regulation of the private system's scope and operation has been minimal. With the exception of the tax qualification procedures of the Internal Revenue Code and the mild disclosure provisions of the Welfare and Pension Plan Disclosure Act, there really has been very little Federal regulation at all and hardly any at the State level, either.

The private pension system itself has grown like "topsy" to the point where it covers an estimated 30 to 35 million workers—nearly half the Nation's work force. The assets of private plans, estimated to be in excess of $160 billion, constitute the largest private accumulation of resources which have avoided the imprint of effective governmental supervision.

The absence of any supervision over these funds and the lack of minimum standards to safeguard the interests of plan participants and beneficiaries has over the years led to widespread complaints signaling the need for remedial legislation.

In 1962 President Kennedy formed a special cabinet-level task force to study the causes of loss of benefits to workers in private plans, as well as to assess the impact of these private retirement programs on the Nation's economy and future public policy. In 1965 President Kennedy's cabinet committee recommended Federal legislation to require minimum vesting standards in private pensions, as well as Federal regulation of plan fiduciaries. The cabinet report also recommended that further study be given to the need for plan termination insurance and portability of benefits between pension plans.

Starting in 1967, I introduced the first comprehensive private pension and welfare plan reform bill (S. 1103) believing then, as I do now, that only a comprehensive, integrated regulatory approach would handle adequately the interrelated problems of deficiencies and abuses in private plans which cause deprivation of retirement benefits on which workers rely. That early bill—the forerunner of the final conference report we are considering today—proposed to establish minimum uniform standards for eligibility, vesting, funding, plan termination insurance, portability, fiduciary safeguards, and full disclosure, as well as a wide range of judicial and administrative remedies to help workers enforce their rights. I am most gratified that the conference report embodies not only all the elements of the original legislation I proposed in 1967, but in many instances duplicates very closely those early provisions.

I reintroduced that original legislation in 1969 and again in 1971, and in 1972 I was joined by the chairman of the Senate Labor Committee, Senator Harrison A. Williams, Democrat of New Jersey, in the bipartisan Williams-Javits bill which was cosponsored by virtually every member of the Senate Labor Committee and ultimately, by over half the Members of the Senate. I would like to add in this connection, that the chairman of the Senate Labor Committee has been a tower of strength in our struggle to achieve lasting retirement protection for millions of American workers. Our collaboration on this project has been one of the high points of my congressional career of over

25 years, and I know that he shares with me a sense of deep satisfaction—even elation—over the birth of a comprehensive pension reform law.

As a result of sweeping investigations and studies by the Senate Labor Committee in 1971 and 1972—which backed by the Senate with $1 million to defray the cost—built one of the most exhaustive records in support of legislation in recent memory—the Senate Labor Committee, with the collaboration of the Senate Finance Committee, which had reacted unfavorably in 1972, but which took an affirmative position in 1973 in a fine display of statesmanship, brought to the floor of the Senate in September of 1973, an omnibus pension reform bill (H.R. 4200) which was passed by a spectacular 93–0 vote.

In February of 1974, the House passed a bill (H.R. 2) similar to the Senate initiated legislation. It too was passed by an overwhelming vote and represented a joint effort of the House Labor Committee and the House Ways and Means Committee.

This briefly is the basic history of the long awaited conference report on pension reform we consider today.

I. WHY PENSION REFORM IS NEEDED

Mr. President, literally thousands of American workers have testified to or written about the urgent need for pension reform. Here are some typical examples from the hearings and investigations of the Senate Labor Committee.

In Cleveland, William Wheeler of Findlay, Ohio, testified he was an employee of the GarWood plant for 42 years. When it was sold to Sargent Industries, who closed the Findlay plant in 1970, his union committee told him if he wanted anything out of his pension plan he had better take it then.

Mr. Wheeler said:

> I went down to the office and signed up for my pension, so here is the damn paper they give me. It don't mean nothing. Forty-two years—30 years of creditable service. So I retired thinking of that damned little pension of $134 monthly from which I had to take a $11.77 deduction for retiring a year and nine months early.

Then he got a letter from Sargent Industries, GarWood Division, saying his pension would be slightly cut. He said:

> Well, I call it a hell of a slight cut. They cut me back to $46.02 a month after 42 years of working in that shop.

The pensions of 500 people were affected by this shutdown. Of these, only the 112 already retired received any pension, and they were forced to take a 62-percent cut. The money simply was not there.

The situation was much the same when Studebaker closed its plant employing nearly 7,000 men and women in South Bend, Ind. The pension plan was able to pay only 15 cents on the dollar of the "vested" benefits of 4,500 employees, ages 40 to 59, who had 10 years or more of service.

In Philadelphia, 73-year-old Leon Grimes, who had worked for Horn & Hardart Baking Co. for 37 years, recalled when he was asked to retire—

> The called me into the office and said "Grimes, it is almost time for you to go out." Well, I said, go out for what? I am not ready to retire.

But he was forced to retire on a pension of $59 a month. Then, 4 years

later this was terminated—for him and 167 other former Horn & Hardart employees who had retired; 600 others were told they would get pensions for only 9 more months. These pensions were being paid not from a funded insurance plan, but out of operating revenues. The company could not spare those revenues any longer. Too bad for the pensioners and for those who expected pensions.

Many workers are led to believe they are covered by a good pension plan because of nicely phrased booklets and other assurances handed them by their employers. When the time comes for the payoff, they learn that the cold legal phrasing in pension contracts says otherwise.

At hearings in Philadelphia; George Allen, who after 32 years with one company was laid off 5 months before becoming eligible for a pension, said:

> You see, all of these pensions are done up by corporation lawyers and against people, say working people with a high school education, and as everybody knows, there's no competition.

In Newark, Raymond Sagendorf, 57 years old, testified he needed 1 more year to qualify for a pension after working for a brewery for 29 years, and was now out of a job. Speaking to Chairman Williams, he said:

> Senator, I have here books on the pension plan that ain't worth a quarter because I can't understand it. I don't know anything about it, and I defy any trustee of our plan to explain this to me . . . you have people running the pension plan that don't even understand it themselves.

Or as John McGrath, who had worked for the same company, explained it—"The worker today has trust." McGrath had not looked into his pension rights until after he learned he was 9 days short of 30 years—and 9 days short of a pension—and out of a job because the plant had closed.

Mr. McGrath said:

> Maybe—I know I was wrong—but, still and all, we were never really counseled on our rights. We may have got these things in the mail, but that was quite a few years ago. I don't know.

Perhaps an even more horrendous case than the foregoing, involved that of Robert E. Pratt of Hudson, N.Y.

In August of 1971, Mr. Robert E. Pratt of Hudson, N.Y., was laid off from Gifford-Wood Co. due to poor business conditions. In the meantime, the company was sold to Greer Industries, Wilmington, Mass., in June 1972, by Stowe-Woodward Co., Inc. of Upper Newton Falls, Mass., former owners of Gifford-Wood Co. Gifford-Wood manufactured coal extraction, materials handling and other machinery. It was a very old company that dates back to 1814.

On June 30, 1972, the Gifford-Wood plan was terminated, 3 months before Mr. Pratt's 65th birthday. Mr. Pratt had worked for Gifford-Wood Co. for 47 years. When he applied for retirement benefits on attaining age 65 he was told he would receive nothing for his 47 years of service since the plan had been terminated on June 30, 1972, and there were funds available to pay retirement benefits only to those who had retired before that date. An "unofficial" note from an insurance agent advised Mr. Pratt to contact me for help since while "the company has no legal obligation to you—there is definitely a question of the morality of choosing June 30, 1972, as the cut-off date or of not offering you something for your 47 years of service."

Mr. President, a pension-reform law is now a reality because of the hardship, deprivation and inequity suffered by American working people. It is their collective anger and disgust that put tremendous congressional majorities behind, and if we who espoused their cause in this body have sometimes not behaved in as gentlemanly a manner as is customary—and I hope those aberrations of conduct have been rare—it is because we too shared their sense of indignation and frustration over what often seemed to be a cynical disregard of fundamental American concepts of fairness and decency by some of those who managed the private pension funds.

The agony of years of frustrated and disappointed beneficiaries has now come to an end. The discipline of law will enable this and succeeding generations of workers to face their retirement period with greater confidence and greater security—and for this achievement we owe a debt of everlasting gratitude to those who brought their problems to the Nation's attention and testified freely and vividly to the need for pension reform.

II. WHAT THE PENSION REFORM LAW WILL DO

The conference report represents a series of fundamental guarantees made to every American worker—guarantees which will secure for millions of Americans the expectation of a decent retirement income in combination with social security. These guarantees are nothing less than a pension "bill of rights" to which every worker—regardless of his occupation, salary or status—is entitled.

While the new law does not require employers to install a private pension plan, it would for the first time provide the following 14 basic rights to those working for an employer with a private pension plan.

ELIGIBILITY

Employees who have the right to be admitted into the plan when they attain age 25 or 1 year of service—whichever is later—with credit up to 3 years for service with the employer prior to age 25.

CREDIT FOR SERVICE

Employees would have the right to obtain credit for vested benefits in accordance with fair and reasonable criteria—generally, 1,000 hours of work during the year will count for a year of service and only if an employee works 500 hours or less during the year will have a break in service.

VESTING

Employees would have the right to vested pension benefits in accordance with the following alternatives: First, 25 percent vesting after 5 years of service, going up by 5 percent steps each year of the next 5 years and steps of 10 percent each year thereafter to 100 percent vesting at the end of 15 years, second, or 100 percent vesting at the end of 10 years service, third, or 50 percent vesting when age and service add up to 45 years with 100 percent vesting 5 years thereafter (with the safeguard that under this alternative an employee must be

50 percent vested after 10 years service regardless of age, and 100 percent vested 5 years thereafter).

JOINT AND SURVIVOR ANNUITY

Employees (and their spouses) would have the right to the protection of an automatic survivor's annuity if they should die when retired. The surviving spouse's benefit could not be less than one-half of the benefit paid to the retiree. Further, the employee can elect to convert an early retirement benefit if he should decline to retire into a surviving spouse's benefit.

FUNDING

Employees have the right to have their pension benefits backed up by the employer making systematic payments to their plan—like paying off a mortgage—over a 30- or 40-year period. This funding obligation must be supervised by competent actuaries qualified by the Federal Government.

EMPLOYEE CONTRIBUTIONS

Employees have the right to withdraw their contributions when they leave the plan and not lose their vested benefit rights if they are at least 50 percent vested. Employees also have the right if they return to the plan to "buy back" any credits they may have lost.

TERMINATION INSURANCE

Employees would have the right to government insurance of their pension benefits—similar to FDIC insurance of bank deposits—which would guarantee that in the event their plan terminates with insufficient funds, their vested pension benefits would be paid up to a maximum limit of $750 monthly—but not to exceed 100 percent of their compensation over their highest 5 years.

FIDUCIARY STANDARDS

Employees would have the right to enforce new Federal rules of conduct applicable to those who manage pension and welfare funds. Employees could prevent plan administrators and trustees from mismanaging plan assets or engaging in conflict of interest deals which jeopardize their plan.

PORTABILITY

With the consent and cooperation of their employers, employees would have the right to transfer their vested pension rights on a tax-free basis from one employer to another through the means of establishing an individual retirement account.

INDIVIDUAL RETIREMENT ACCOUNT

Employees who lack private pension coverage would have the right to deduct up to $1,500 annually or 15 percent of their annual compensation—whichever is less—into their own individually established pension plan.

SELF-EMPLOYED BENEFITS

Self-employed individuals would have the right to deduct up to $7,500 annually or 15 percent of their annual compensation—whichever is less—for contributions to plans covering self-employed individuals and their employees. The current deductible limits are $2,500 annually or 10 percent of compensation, whichever is less.

DISCLOSURE

Employees would have the right to get clearly-written and understandable descriptions of their plan as well as access to underlying plan documents and copies of annual financial statements covering in detail the fiscal operations of their plan. In addition, annual statements of earned and vested benefits would be made available to employees and when they leave employment with vested rights they must be furnished with a statement of their rights, and the same information is to be furnished to the Social Security Administration for record-keeping purposes.

BENEFIT PROCEDURES

Every employee is entitled to notice in writing if his claim for benefits has been denied, with the specific reasons for the denial set forth in understandable language. In addition, every employee is entitled to a full and fair review by the plan administrator of any benefit denied and has the right to bring an action in a Federal court, regardless of the amount in controversy, to recover benefits wrongfully denied.

PROTECTION OF PENSION RIGHTS AGAINST EMPLOYER OR UNION INTERFERENCE

Every employee is to have the right, enforceable by the Secretary of Labor, to be free from interference with his pension benefits. This means that he cannot be discharged, fined, suspended, expelled or otherwise interfered with in order to prevent him from receiving pension benefits or attaining eligibility for pension benefits. There are stiff criminal penalties if this type of interference takes the form of force, fraud or violence or threats of this nature.

These 14 guarantees to American workers are at the heart of pension reform and provide much-needed and long-denied protections. To be sure, the new pension law is not perfect but no one ever claimed that it was. But it is a truly magnificent beginning—as important in its own right as the first social security law—and it will go very far in assuring retirement security based on a worker's long career of productive labor.

III. OUTLINE OF CONFERENCE AGREEMENT

The following are the major elements of the conference report:

Participation Rules: The Senate bill required workers to be admitted into a plan no later than age 30 or 1 year of service, whichever was the later. Once admitted, the worker was to be given up to 5 years of back credit for service prior to admission into the plan—but credit did not have to be given for service prior to age 25. The House bill

required a worker to be admitted into the plan at age 25 or 1 year of service, whichever was later. In addition, the House bill provided that any worker who had completed 3 years of employment prior to age 25, had to be admitted into the plan. Also, the House bill provided that a plan could require 3 years of service by a worker before admitting him to the plan, if the plan provided immediate full vesting when the worker was admitted to membership.

The conference report, following the general House approach, requires that plans cannot exclude from membership any worker who has reached age 25 or completed 1 year of service, whichever is the later. The conference report deletes the special House rule requiring admission of an employee to the plan when he has 3 years of service prior to age 25, but substitutes a modified version of the Senate "look-back" rule by requiring that once an employee has been admitted to the plan, he shall be given up to 3 years of credit for service prior to age 25—excluding service prior to age 22. In addition, the conference report accepts the House rule permitting a 3 year service requirement if the plan provides 100 percent vesting when the employee is admitted to the plan. Also, the conference report adopts a Senate amendment which would permit plans of tax-exempt educational institutions to restrict membership in the plan to workers attaining age 30 or 1 year of service, whichever is the later, if they provide 100 percent full vesting on admission to the plan.

Year of Service: Under the Senate bill a worker was regarded as performing a year of service if he was employed for more than 5 months during the year, for at least 80 hours each calendar month. Under the House bill, the determination of year of service was generally left to regulations. Under the conference report, a year of service generally will constitute 1,000 hours (an exception being made for maritime industries where a year of service will constitute 125 days). In addition, a Senate amendment resulted in a special rule for seasonal employees who customarily work less than 1,000 hours during a year; in this case, the Secretary of Labor will write special regulations defining year of service. The foregoing rules apply for purposes of participating and vesting; they do not apply to the earning of benefits where plan rules will govern except that a plan must accrue benefits for less than full time service on a pro rata basis and is not required to accrue a year of benefits for any employee who work less than 1,000 hours during the year.

Break in service: Under the Senate bill all service was to be aggregated regardless of the length of a break in service before an employee would qualify for initial vesting rights. Under the House bill an employee who was at least 50 percent vested would not lose credit for service prior to a break in service, providing he returned to the plan for at least a year. If he had 4 years of consecutive service he would not lose credit due to a break in service even if he was less than 50 percent vested, unless his break in service was 6 years or longer.

Under the conference agreement, a 1-year break in service occurs in any calendar year, plan year, or other consecutive 12 month period designated by the plan and applied on a consistent basis—and not prohibited under Labor Department regulations—in which the employee has no more than 500 hours of service.

The rules with respect to breaks in service for vesting and benefits accrual purposes may be summarized as follows:

First. If an employee has a 1-year break in service, the plan may require a 1-year waiting period before his pre-break and post-break service must be aggregated under the plan. However, once the employee has completed this waiting period, he must receive credit for that year—for purposes of vesting and accrued benefit.

Second. In the case of an individual account plan—including a plan funded solely by individual insurance contracts, as well as a "target benefit plan"—if any employee has a 1-year break in service, his vesting percentage in pre-break benefit accruals does not have to be increased as a result of post-break service.

Third. Subject to rules (1) and (2), once an employee has achieved any percentage of vesting, then all of his pre-break and post-break service must be aggregated for all purposes.

Fourth. For all nonvested employees—and subject to rules (1) and (2)—the employee would not lose credits for pre-break service until his period of absence equaled his years of covered service—known as the so-called "rule of parity".

For years beginning prior to the effective date of the vesting provisions, a plan may apply the break in service rules under the plan. However, no plan amendment made after January 1, 1974, may provide for break in service rules which are less beneficial to any employee than the rules in effect under the plan on that date, unless the amendment complies with the break in service rules established under the conference agreement.

Vesting: Under the House bill a plan was required to meet one of three minimum vesting schedules. First, a plan could provide a graded vesting standard, under which the employee must be at least 25 percent vested in his accrued benefit after 5 years of covered service, with 5 percent additional vesting for each of the next 5 years, and 10 percent additional vesting for each year thereafter (so that the employee was 100 percent vested after 15 years of service). Second, a plan could provide that each employee must be 100 percent vested after 10 years of service. Third, a plan with 5 years or more of service would be 50 percent vested when the sum of his age and his years of service equaled 45, with 10 percent additional vesting for each year thereafter.

Under the Senate amendment, plans generally were required to comply with the first of these alternatives, the graded vesting schedule. However, plans which were already using the 10-year/100-percent vesting schedule were permitted to continue to use that method.

Under the conference agreement plans must provide full and immediate vesting in benefits derived from employee contributions.

With respect to employer contributions, the plan—except class year plans—must meet one of three alternative standards. Two of those, the 5 to 15 year graded standard and the 10-year/100-percent standard are the same as provided in the House bill—and briefly described above. The third standard under the conference agreement is a modification of the House bill "rule of 45." As under the House rule, under the modified rule of 45, an employee with 5 or more years of covered service must be at least 50-percent vested when the sum of his age and years of covered service total 45, and there must be

provision for at least 10 percent additional vesting for each year for covered service thereafter. Unlike the House bill, however, each employee with 10 years of covered service—regardless of his age—must be at least 50 percent vested and there must be provision for 10 percent additional vesting for each year of service thereafter, and further, if the modified rule of 45 is adopted, service prior to age 22 must be credited if the plan admits workers to the plan prior to that age.

Forfeiture upon withdrawal of contributions: The House bill provided that an employee's rights to benefits derived from employer contributions may not be forfeited on account of the employee withdrawing his mandatory contributions. The rule in the Senate bill was just the opposite. The conference agreement provides that an employee's rights to benefits from employer contributions may be forfeited where the employee is less than 50 percent vested in these benefits and withdraws all or any part of his own mandatory contributions to the plan. However, the plan must also provide a "buy back" rule; that is, that the employee's forfeited benefits will be fully restored if the employee repays the withdrawn contributions—with interest of 5 percent per annum, compounded annually—to the plan. Both these rules may be ignored if the plan does not provide for mandatory employee contributions after date of enactment.

Accrued benefit rules: Under the Senate bill, in defined benefit plans, the amount of benefits earned by the worker per year of service was to be determined by calculating the total years of service required for a normal retirement benefit and then deriving the fractional amount of benefit for each year of service and multiplying it by the worker's period of service over the period he would have had to work to reach normal retirement age. Under the House bill there were two formulas: First. The accrual rate for any year was to be no more than 133⅓ percent of the accrual rate for any other year, or second, for each year, benefits were to be accrued at the rate of not less than 3 percent of the maximum retirement benefit. With several technical modifications, the conference agreement combines the Senate and House rules.

Variations: Under the House bill, the Secretary of Labor could defer the vesting requirements of the bill indefinitely and prescribe other vesting rules for a plan that showed economic hardship of one sort or another. Under the Senate bill, such a variation could only be provided for a limited period of 6 years. Under the conference agreement, a variation can be granted for an initial period of 4 years—with possibility of extension for an additional 3 years if application is made within 1 year prior to expiration of the initial variation period.

Joint and Survivor Annuities: The House and Senate bills were essentially similar in requiring retirement benefits to be automatically paid in the form of a joint and survivor annuity unless the worker decided otherwise in writing. However, the House bill also required a survivor annuity to be paid even though the participant had not retired, if he died while working on or after his earliest retirement age. The House bill also required the participant to have been married for 5 years in order for the surviving spouse to obtain these benefits.

Under the conference agreement, when a plan provides for a retirement benefit in the form of an annuity, and the participant has been married for the 1-year period ending on the annuity starting date, the

plan must provide for a joint and survivor annuity. The survivor annuity must be not less than half of the annuity payable to the participant during the joint lives of the participant and his spouse.

In the case of an employee who retires, or who attains the normal retirement age, the joint and survivor provision is to apply unless the employee elected otherwise.

In the case of an employee who is eligible to retire prior to the normal retirement age under the plan, and who does not retire, the joint and survivor provisions need not be applicable under the plan, unless the employee made an affirmative election. Moreover, the plan need not make this option available until the employee is within 10 years of normal retirement age.

The employee is to be afforded a reasonable opportunity, in accordance with regulations, to exercise his election out of—or, before normal retirement age, into—the joint and survivor provision before the annuity starting date—or before he becomes eligible for early retirement. The employee is to be supplied with a written explanation of the joint and survivor provisions, explained in layman's language, as well as the practical—dollar and cents—effect on him—and his or her spouse—of making an election either to take or not to take the provision.

To prevent adverse selection the plan may provide that any election, or revocation of an election, is not to become effective if the participant dies within some period of time—not in excess of 2 years—of the election or revocation (except in the case of accidental death where the accident which causes death occurs after the election.

Funding: Both the Senate and House bills contained similar funding rules requiring that currently created costs be funded currently, and that costs attributable to already existing liabilities, past service liabilities created under plan amendments and experience gains or losses be amortized over fixed periods of time. The House bill, however, specified funding of existing past service liabilities over a 40-year period—the Senate bill called for 30—and required 20-year amortization of unfunded vested liabilities—not in the Senate bill.

Under the conference agreement, initial past service liabilities and past service liabilities arising under plan amendments are to be amortized over no more than 30 years—40 years for the unfunded past service liabilities on the effective date of these new funding rules, in the case of existing plans—and experience gains and losses are to be amortized over no more than 15 years. With respect to multiemployer plans, past service liabilities generally may be amortized over no more than 40 years, and experience losses over no more than 20 years. Following the Senate amendment, the conference agreement does not include a second general minimum funding standard based only on "vested" liabilities.

Plan Termination Insurance: The Senate bill provided for the following: First. A Pension Benefit Guaranty Corporation within the Labor Department to be administered by a board of directors consisting of the Secretaries of Labor, Commerce, and Treasury, with the Secretary of Labor being Chairman; second, generally, coverage of all defined benefit plans regardless of size; third, premiums for the first 3 years to be paid at the rate of $1 per participant and thereafter as prescribed by corporation—subject to congressional ratification; fourth, one insurance fund for all plans but authority to prescribe dif-

ferential premium rates for single and multiemployer plans; fifth, insurance of all vested benefits provided by plan—including those which are in excess of statutory requirements; sixth, insured benefits to be limited to the lesser of 50 percent of average wages during 5 years preceding termination or $750 monthly; and seventh, employer liability up to 30 percent of net worth covering both single and multiemployer plans, with provisions for employer liability insurance.

The House bill provided that: First, the Pension Benefit Guaranty Corporation would be administered by the Secretary of Labor; second, generally, coverage of all defined benefit plans having more than 25 participants; third, a two-part premium rate consisting of unfunded insured liabilities—0.1 percent for single employer plans and 0.025 for multiemployer plans—and a uniform rate levied on all insured benefits not to produce revenue in excess of the unfunded rate, with authority for revision subject to congressional approval; fourth, different insurance funds for single and multiemployer plans; fifth, insurance only of vested benefits required by statute and only if the plan has been an insured member for 5 years; sixth, insured benefits not to exceed actuarial equivalent of an annuity beginning at age 65 of $20 per month per year of credited service; and seventh, employer liability up to 50 percent of net worth but only for single employer plans but with provision for employer liability insurance.

The conference agreement generally follows, the Senate bill with respect to points one and two. With respect to premiums, single employer plans are to pay $1 per plan participant during the first full plan year following enactment. Multiemployer plans are to pay 50 cents per plan participant during these periods. During the second full plan year, both single employer and multiemployer plans may elect to pay a premium determined under the formula of the House bill but not less than one-half of what they would have to pay under the per capita rates.

In subsequent years the corporation may set premiums using the per capita rate base, the unfunded insured benefits rate base, or the total insured benefits rate base, or any combination of these—subject to the rate limitations above described. If the corporation should want to combine any two or more of these three rate bases, it is to design the bases to produce approximately equal amounts of aggregate premium revenue yearly from each.

The corporation may exceed the rate limitations, produce unequal amounts of aggregate premium income from the different rate bases, or use other rate bases, but only as to plan years beginning after Congress approves these revisions through a special procedure set forth in the conference agreement.

With respect to point four, the House version was accepted and with respect to point five, the Senate version, with certain modifications for plans and amendments less than 5 years old—or unfunded plans which did not meet IRS qualification standards for 5 years—was accepted. With respect to point six, the Senate bill was generally followed. However, the limitation is set as the actuarial equivalent of the lesser of 100 percent of the employee's wages during his highest-paid 5 consecutive years—without regard to temporary absences from participation during that period—or $750 monthly. This amount is adjusted to reflect changes in the social security contribution and benefit base.

Finally, with respect to employer liability, generally, the Senate bill was followed.

Portability: The House bill did not provide for a central portability fund as did the Senate bill. Both bills provided for tax-free rollovers permitting distributions from qualified plans or into individual retirement accounts. The conference agreement expands the tax-free rollovers to permit portability between qualified plans with the individual retirement account serving as the substitute for the central portability fund of the Senate bill. Under this compromise both the worker's new and old employers must agree to the transfer from, and the distribution to the worker's individual retirement account. The Secretary of Labor is to provide actuarial assistance to those workers transferring benefits under this system. In addition, the Joint Pension Task Force established under the bill is to study further the feasibility of a central portability fund and report its recommendations within 2 years of enactment.

Fiduciary Standards: With one major exception, both the Senate and House bills provided for similar Federal fiduciary standards, which included establishing the rule that plan fiduciaries must act "prudently" and for the exclusive benefit of plan participants and beneficiaries. Under the House bill however, fiduciaries were not forbidden from dealing on behalf of the plan with parties in interest if the transaction was for adequate consideration. Under the Senate bill, party in interest transactions were strictly forbidden except for certain limited statutory exceptions or where the Secretary of Labor provided a variance in the interests of participants and beneficiaries.

The conference agreement follows the Senate bill, including the restriction that a plan may not acquire or hold employer securities with a value in excess of 10 percent of plan assets. With respect to current holdings in excess of the 10 percent rule, the conference agreement provides for a 10-year phaseout. With respect to certain brokerage services which conflict with the party in interest prohibitions, the conference agreement provides for a 3-year phaseout unless the Secretaries of Labor and Treasury provide a variance. Certain ancillary services—for example maintaining uninvested cash balances—performed by banks are permitted providing they conform to regulations of the Secretaries of Labor and Treasury which will place limits on the discretionary exercise of these functions.

Reporting and Disclosure: The House bill required annual reporting of detailed financial and actuarial data and comprehensive plan descriptions to the Secretary of Labor, and disclosure of more limited data to the participants. The financial and actuarial data filed with the Secretary of Labor are required to be in the form of a conventional audited financial statement prepared by a qualified accountant and a certified actuarial statement prepared by an enrolled actuary. The Senate bill required submission of comparable financial and actuarial data and plan descriptions to both the Secretary of Labor and participants. Like the House bill, actuarial data is required to be certified by an enrolled actuary. Unlike the House bill, all reports were required to be submitted on forms promulgated by the Secretary. In general, the conference agreement combines the rules of both the House and Senate bill.

The conference agreement adopts the reporting format contained in both the House and Senate bills. Each plan—unless exempted—is to be required to report annually to the Secretary of Labor certain financial and actuarial data. In addition to these reports, each plan will be required to have prepared an audited financial statement and defined benefit plan must have a certified actuarial report. Special reports are also required at the time of plan terminations.

The Secretary of Labor is given authority to prescribe forms for reports to it—other than the audited financial statement and certified actuarial report—paralleling similar authority already available to the Secretary of Treasury. The two Secretaries are to unify, to the extent feasible, the reports made to them.

The Secretary of Labor is also given variation authority with respect to pension and welfare plans, so that practical reporting problems may be alleviated. The Secretary could, for example, provide an alternative method of reporting receipts and disbursements for plans maintaining their books and records on an accrual basis.

Contributions on behalf of self-employed and shareholder employees: Under the House bill the maximum limitations on deductions for self-employed individuals would be increased from 10 percent of their self-employment income, not to exceed $2,500, up to 15 percent of their self-employment income, not to exceed $7,500. In any event, a minimum of $750 would be deductible by self-employed individuals, without regard to the percentage limitations. The Senate amendment, although containing a number of technical differences, is generally similar to the House bill in this area, and generally, the conference substitute follows the House bill with respect to technical matters. Also, the conference substitute provides the same treatment for deductions with respect to contributions made on behalf of subchapter S corporation shareholder-employees—in applying the 15 percent limitation not more than $100,000 of earned income may be taken into account—and authorizes Treasury regulations to allow self-employed persons and shareholder-employees to translate the 15 percent, $7,500 limitations into approximately equivalent limitations on benefits which individuals can receive under a defined benefit plan.

Tax deductions for individual retirement accounts: (See discussion under IV).

Overall limitations on contributions and benefits: Under the House bill, in general, in the case of defined benefit plans, the pension may be paid from a qualified plan with respect to any individual may not exceed 100 percent of his compensation in his high 3 years of employment or $75,000, whichever is the lesser. In the case of defined contribution plans, the annual additions to an individual's account may not exceed the lesser of $25,000, or 25 percent of his compensation. Both the $75,000 amount and $25,000 amount referred to above are subject to cost-of-living allowances. If an employee is under both a defined benefit plan and a defined contribution plan then the sum of, first, the percentage utilization of the maximum limit under the defined benefit plan, and second, the percentage utilization of the maximum limit under the defined contribution plan, cannot exceed 140 percent.

Under the Senate amendment, benefits under a defined benefit plan are limited to 75 percent of the participant's high-three-consecutive

years of compensation, taking into account no more than $100,000 of compensation per year. A closely comparable limitation is provided for defined contribution plans, so that deductible contributions may not exceed amounts sufficient to fund a pension for the employee equal to 75 percent of his average high-3-years of compensation—not in excess of the first $100,000 in any one year. Where an employer had both a defined benefit plan, and a defined contribution plan, the maximum benefit payable under the defined benefit plan would have to be reduced in proportion to the amount of the benefit which was funded through the defined contribution plan.

The conference substitute closely follows the provisions of the House bill.

Lump-Sum Distribution: Both the House bill and the Senate bills treat the post-1973 taxable portion of a lump-sum distribution from a qualified pension, profit-sharing or stock bonus plan as ordinary income taxed under an averaging device which treats it as if it were received evenly over a period of years. Under the House bill, this special averaging treatment provides the treatment which would be applicable if the amount were spread over a period of 10 years, while the Senate bill provides the treatment which would be applicable if it were spread over 15 years. Both the House and Senate versions treat the portion of the payment attributable to the pre-1974 period as long-term capital gain.

The conference substitute accepts the 10-year averaging period provided under the House bill. Both the House bill and the Senate amendment compute the ordinary income portion under the same general type of averaging device and this same general procedure is used in the conference substitute.

Salary Reduction and Cash or Deferred Profit-Sharing Plans: Under present law, in general, an employee's contributions to a qualified retirement plan maintained by his employer are not tax deductible. In the case of a salary reduction plan, or a cash or deferred profit-sharing plan, however, the Internal Revenue Service has permitted employees to exclude from income certain amounts contributed by their employers to the plan, even where the source of these amounts is the employee's agreement to take salary or bonus reductions, or forgo salary increases.

On December 6, 1972, the Service issued proposed regulations which would have changed this result in the case of salary reduction plans, and which called into question the continued viability of the treatment of cash and deferred profit-sharing plans.

Under the Senate bill, contributions made after December 31, 1973, to salary reduction, and so forth, plans would be treated as nonexcludible employee contributions to the plan for Federal tax purposes. Under the House bill, the Treasury regulations were to be withdrawn and while Congress studied the matter, no further regulations could be issued before January 1, 1975. During this period the pre-1972 position of the IRS was to govern.

In order to allow time for congressional study of these areas, the conference substitute provides for a temporary freeze of the status quo. Thus, contributions to plans in existence on June 27, 1974, are to be governed under the law as it was applied prior to January 1, 1972. This treatment is to continue at least through December 31, 1976,

or—if later—until regulations are issued in final form in this area, which would change the pre-1972 administration of the law.

Provisions relating to jurisdiction: see discussion under IV.

Preemption of State law: see discussion under IV.

Effective dates: First. Reporting and disclosure—The conference agreement provides that the reporting and disclosure provisions generally are to take effect on January 1, 1975. However, in the case of a fiscal year plan which begins before January 1, 1975, and ends after December 31, 1974, the Secretary of Labor may by regulation postpone the effective date until the beginning of the first plan year of the plan which begins after January 1, 1975.

Second. Participation and vesting—changes made in the bill with respect to participation and vesting are to apply to new plans in plan years beginning after the date of enactment. For plans in existence on January 1, 1974, the general effective date of these provisions is to be plan years beginning after December 31, 1975.

The general effective date of plan years beginning after December 31, 1975, applies in the case of collectively bargained plans in the same manner as in the case of other plans. However, in order that the opening up of the contract to comply with the requirements of this bill will not require negotiations with respect to other matters, the conference agreement provides that a collective-bargaining contract, in existence on January 1, 1974, which does not expire until after the general effective date for existing plans, may be reopened solely for the purpose of allowing the plan to meet—or exceed—the minimum requirements of this act, without having to be opened for any other purpose.

Finally, the conference substitute provides that if a plan, adopted pursuant to a collective-bargaining agreement in effect on January 1, 1974 contains a clause: First, which provides supplementary benefits which are in the form of a lifetime annuity and refer to not more than one-third of the basic benefit to which the employees generally are entitled; or second, which provides that a 25-year service employee is to be treated as a 30-year service employee, if that right is granted by a contractual agreement which is based on medical evidence as to the effects of working in an adverse environment for an extended period of time—such as workers in foundries or workers in asbestos plants—then the application of the accrued benefit provision of this bill to those benefits is to be delayed until the expiration of the collective-bargaining agreement—but no later than plan years beginning after December 31, 1980.

Third. Funding—Under the conference agreement, in the case of new plans, the funding provisions are to apply to the first full plan year beginning after the date of enactment of the bill. Generally, in the case of plans existing on January 1, 1974, the new funding provisions are to become applicable for plan years beginning after December 31, 1975. In the case of collectively bargained plans—both single employer and multiemployer plans—existing on January 1, 1974, the effective date would be delayed until the termination of the contract existing on January 1, 1974, but not later than plan years beginning after December 31, 1980.

Fourth. Fiduciary Responsibility—Under the conference agreement, generally, the new fiduciary responsibility rules are to take effect on

January 1, 1975. However, with respect to any plan which is covered by plan termination insurance and which terminates before January 1, 1975, the fiduciary rules are to take effect on the date of enactment of the bill.

Under the labor provisions, the Secretary of Labor may postpone until January 1, 1976, the effective date with respect to the requirements for establishing a plan and establishing a trust, the rules regarding liability for breach by a cofiduciary—other than the rules allowing delegation of asset management functions to an investment manager—and the rules prohibiting exculpatory clauses.

The conference agreement also provides transition rules for situations where employee benefit plans are now engaging in activities which do not violate current law, but would be prohibited transactions under the substitute.

One of the transition rules permits the leasing or joint use of property involving a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of the contract), to continue for 10 years beyond that date until June 30, 1984. A similar 10-year transition rule applies to loans or other extensions of credit under a binding contract in effect on July 1, 1974 (and renewals thereof), where the loan remains as favorable as an arm's-length transaction with an unrelated party and is not prohibited under present law.

The conference agreement allows a plan to sell property, at arm's-length terms, to a party in interest where the property is now under a lease or joint use which qualifies for the 10-year transition rule described above. Sales of this type must occur before July 1, 1984. This transition rule is provided because it appears that such leases are not uncommon and in such cases often a party in interest is the best available buyer.

The conference agreement allows certain fiduciaries to provide multiple services to a plan until June 30, 1977, if he ordinarily and customarily furnishes services on June 30, 1974. Under this provision, such a fiduciary would not be limited to providing those services to plans which he served on that date but he could take on new customers after that date. Under the conference agreement, multiple services also can be provided until June 30, 1977, if they were being provided under a binding contract in effect on July 1, 1974—or under renewals of such a contract.

The conference agreement permits a plan to dispose of excess employer securities or employer real property owned by the plan on June 30, 1974, and at all times thereafter to a party in interest if the holding of such property would violate the rules governing holding of employer securities and real property, and if the sale, and so forth, is at fair market value.

Fifth. Individual Retirement Accounts—The deduction for retirement savings is to be available for taxable years beginning after December 31, 1974.

Sixth. Contributions for the self-employed—In general, the amendments with respect to H.R. 10 plans are to apply to taxable years beginning after December 31, 1973. The rule with respect to the $100,000 contribution base limitation is to apply to taxable years beginning after December 31, 1975, or, if earlier, the first year in

which contributions under the plan exceed the deductible contribution limits of present law. The rules facilitating the use of defined benefit plans for the self-employed are to apply to taxable years beginning after December 31, 1975. The rules with respect to excess contributions are to apply to contributions made in taxable years beginning after December 31, 1975, and the rules with respect to premature distributors are to apply to distributions made in taxable years beginning after December 31, 1975. The rule permitting withdrawal of voluntary contributions by owner-employees is to apply to taxable years ending after the date of enactment.

Seventh. Plan termination insurance—Under the conference agreement, benefits payable by single-employer plans are insured with respect to plans terminated after June 30, 1974. Employers do not, however, incur contingent liability coverage for plans terminating between June 30, 1974, and the date of enactment.

With respect to multiemployer plans, benefits generally are not covered for plans terminating before January 1, 1978. However, the corporation may, in its discretion, cover the benefits of multiemployer plans that had been maintained for five years prior to a termination after the date of enactment, if the Corporation determines that this coverage will not jeopardize the coverage of multiemployer plans terminating after December 31, 1977, and the Corporation may in its discretion cover the benefits for certain nonqualified multiemployer plans before January 1, 1978, if they meet certain specified standards.

Premiums for contingent employer liability insurance arranged by the Corporation may be collected within 3 years of date of enactment. Coverage under such contingent liability insurance will commence after 5 years payment of premiums.

IV. MAJOR ISSUES IN CONFERENCE

Sound and attainable legislation is the product of compromise. Although both the Senate and House pension bills were comprehensive in scope and provided similar guarantees and safeguards, there were important distinguishing features of both bills that required resolution in conference. In numerous instances, the Senate position prevailed; in other cases the House view was accepted, and in still other areas concepts from both bills were combined into new, more satisfactory provisions. While a complete review of these revisions is contained in the joint explanatory statement of the conferees committee, here are some highlights:

VESTING

The Senate accepted the three vesting alternatives contained in the House bill but succeeded in modifying the rule of 45 so that any worker with 10 years of service would have to be vested 50 percent regardless of his age. Nonetheless, because of our concern that even the modified rule of 4 might lead to difficult-to-prove discrimination against the hiring of older workers, or that 100-percent vesting after 10 years—so called cliff vesting—might frustrate medium-service workers from obtaining vested benefits, the conference agreement specifically directs the Joint Pension Task Force established under the bill to gather evidence on the operation of these vesting rules in practice

to determine whether they adequately fulfill the needs of the Nation's work force. Naturally, we also expect the Departments of Labor and Treasury to assist in this matter since they are likely to have firsthand knowledge regarding complaints of inadequacy or abuse.

In addition, the Senate succeeded in eliminating House provisions which would have reduced all vesting by 50 percent during the first year after the effective date of the vesting provisions, which would have permitted plans to retroactively decrease vested rights of workers, and which would have permitted indefinite delays in certain cases for reaching compliance with the vesting requirements.

JOINT AND SURVIVOR ANNUITIES

The Senate accepted the House provision permitting a prenormal retirement survivor's benefit while reducing eligibility for survivor's benefits from a 5-year to a 1-year marriage requirement.

ACTUARIES

Both the Senate and House bills established similar qualification procedures for actuaries, the Senate bill leaving it primarily to regulations while the House bill provided more specific guidelines. In general, the House version was accepted; however, the Senate succeeded in deleting a "grandfather" provision in the House bill that would have permitted qualification of individuals as actuaries based solely on a showing of experience in the "administration" of plans.

This criterion was felt insufficient in light of the new funding, plan termination insurance, and reporting requirements which will demand a higher degree of actuarial competence. While this still means that, at least initially, not all plans will require the services of persons with the highest level of actuarial skills, both the Secretaries of Labor and Treasury will have the obligation to review periodically the adequacy of services performed by actuaries enrolled to practice under the law, and to require an individual to upgrade his level of actuarial skills if the Secretaries believe that is the way to assure that the individual will discharge satisfactorily his obligations under the law. Moreover, with respect to individuals enrolled as actuaries on a temporary basis before January 1, 1976, who do not meet the highest standards of education and training, the Secretaries could require the posting of a bond or similar form of indemnity in order to safeguard the interests of participants and beneficiaries.

FIDUCIARY RESPONSIBILITY

One of the major points of contention between the Senate and House conferees was the degree to which party-in-interest transactions by plan fiduciaries should be barred. The House bill would have barred such transactions only if they were not for adequate consideration. The Senate bill—with certain limited statutory exemptions—barred such transactions outright unless the plan received a variation from the Secretaries of Labor and Treasury permitting such a transaction in the interests of plan participants and beneficiaries.

The Senate position prevailed and the bill is now universally regarded as having closed what otherwise would have been a major loophole in the Federal effort to protect the integrity of employee pension and welfare funds against "raiding" by insiders.

PORTABILITY

One of the major concessions made by the Senate was the removal of the voluntary central portability fund concept from the bill and the substitution of voluntary portability through the means of individual retirement accounts, with actuarial assistance from the Secretary of Labor. I was disappointed that the central portability concept was not approved by the conferees but at the same time gratified that some recognition of the need to make a start on portability was given by the conferees. I should also note that the conference agreement directs the joint pension task force to study further the feasibility of a portability fund and, at least from my point of view, I regard this as a priority item since the needs of younger, more mobile workers can, in my opinion, only be met adequately by providing the apparatus of a central fund. Such a central fund would relieve both employers and individual workers of recordkeeping problems, would provide competent actuarial guidance on a more systematic basis with respect to the transfer of vested rights when workers change jobs, and would provide generally greater assurance of investment safety of workers' funds than would the individual retirement account concept. The elimination of the central portability fund does not represent a fatal deficiency in the conference agreement but it does mean that more vigorous steps will be required in the future to assist workers in obtaining the maximum degree of protection within the context of a voluntary private pension system.

PLAN TERMINATION INSURANCE

As indicated previously, Senate provisions predominate in the conference agreement on plan termination insurance. Probably one of the most difficult problems confronted by the conferees was the selection of effective dates for the insurance program, and here both Senate and House conferees worked diligently to arrange a structure of effective dates that would bring the insurance protection generally into effect as quickly as possible. This was done in recognition of the fact that depressed economic conditions in certain regions created the possibility that a number of plans were in critical straits and were terminating or were likely to do so imminently. Lack of immediate protection for beneficiaries in these cases involved workers who had earned or were drawing pensions notwithstanding the new provisions of the bill which have a delayed effective date.

This insurance coverage will be available for single employer plans terminating as of July 1 of this year, and discretion is provided to cover multiemployer plans that terminate prior to the mandatory coverage date of January 1, 1978. In order to accomplish these purposes, it was necessary to afford the Pension Benefit Insurance Corporation emergency authority to institute insurance protection on a "crash" basis and the Labor Department has provided invaluable

assistance in recommending procedures that would expedite the handling of terminations during this period. Naturally, the institution of "crash" procedures during the startup of a new and untried program is bound to create some administrative difficulties, but the conferees expect the fullest cooperation from employers, trade unions, plan administrators and others in this connection. Evidence that plan terminations were purposely triggered to manipulate the insurance provisions to the advantage of the employer will constitute grounds for disallowing insurance coverage and to the extent that benefit rights of workers have been impaired thereby, the employer and plan administrator will be subject to civil suit for damages by reason of section 414(b)(3) which imposes fiduciary obligations in this regard. In short, there must be a valid business purpose underlying the plan termination.

In view of the relatively minor incidence of multiemployer plan terminations the conferees determined to delay mandatory coverage of multiemployer plan terminations until January 1, 1978, but to commence premium payments by such plan as of date of enactment to build up reserves in the event the Pension Benefit Guaranty Corporation extends discretionary coverage prior to that date. It is to be expected that this discretionary coverage will be extended fully to protect employees benefits in multiemployer plans.

The conferees had no intention whatsoever of treating workers in these plans as "second-class citizens" and are determined that benefits be fully protected to the statutory limits regardless of the type of plan involved. In this connection, the situation of "partial termination" of a multiemployer plan created by withdrawal of a substantial contributing employer or employers must be rectified. In my own State, this precise situation existed with respect to the Rheingold Brewery plant in Brooklyn and but for the intervention of outside financial assistance, many employees would have lost their pension benefits. In exercising its discretionary authority to cover partial terminations, it is to be emphasized that the decision to provide insurance does not rest solely on affirmative action by the plan, but may be instituted by the corporation itself, and that the provisions concerning employer liability are applicable to any termination—partial or otherwise—of a multiemployer plan covered under discretionary authority.

DISCLOSURE

The principal difference between the Senate and House bills in the area of disclosure and reporting was the House bill's restrictions on the Secretary of Labor's authority to prescribe forms for information and data required by law to be filed with the Department of Labor and made available to the public. This somewhat anomalous withdrawal of authority which had existed for over 10 years under the Welfare and Pension Plans Disclosure Act was rectified in conference. The conference agreement, which provides full authority to the Secretary of Labor to prescribe forms—except in the areas of accountant's and actuaries statements and plan booklets—is to be interpreted in a meaningful way. The fact that accountants or actuaries are or may be required to furnish a statement covering data which also appears in greater detail as part of the reports furnished by plan administrators

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is not to be construed as a limitation on the Secretary of Labor's authority to prescribe forms or additional schedules necessary to carry out the purposes of the act.

In addition, with respect to reports required to be supplied to the Treasury Department for transmission to Social Security and to participants concerning their benefit rights, the conferees accepted a House provision permitting regulations to establish the extent to which multiemployer plans would have to comply with these requirements. This differential treatment was established in light of practical burdens encountered by multiemployer plans with large numbers of participants who move rapidly from one contributing employer to another or whose status cannot be ascertained with certainty due to their temporary absences from covered employment. Nonetheless, the purpose of leaving such reporting to regulation is not to relieve such plans from reporting altogether, but rather to permit the adoption of alternative methods of reporting which are more practical in light of the specific problems referred to above.

INVESTIGATIONS

The Senate bill contained authority for the Secretary of Labor to conduct an "on-the-spot" audit of plan books and records but restricted such audits to no more than once annually unless the Secretary had reasonable cause to believe there was a violation of law. The House bill contained no authority for "spot" audits and restricted the Secretary's authority to investigate upon a showing of reasonable cause to believe a violation of law was involved. Further, the House bill precluded the Secretary from entering premises of the plan unless he had reasonable cause to believe a violation of law existed.

House conferees were willing to agree to permitting the Secretary to conduct a "spot" audit of plan books and records no more than once annually, but were unwilling to permit such an inspection to take place on the premises of the plan unless the Secretary had reasonable cause to believe there was a violation.

In other words, the House insisted that such "spot" audits could only take place by producing the books and records at the Secretary's offices. Such an approach would have produced needless burdens and expense on plan administrators and could also have led to frustration of the prophylactic purpose behind "spot" audits. Accordingly, at my suggestion, House conferees accepted a modification which would permit the Secretary to conduct "spot" audits on the premises of the plan—without reasonable cause to believe a violation of law exists—if such audit is carried out pursuant to a previous agreement with the plan.

So as to clarify the legislative history on this point, it should be made clear that in order to carry out the purposes of the act, the Secretary may insist on such agreements as a condition of any exemption or variation he is authorized to grant—either independently or together with the Secretary of the Treasury—or as a condition of any compliance agreement he may enter into for purposes of settling any cause of action he has brought or could have brought absent such compliance agreement. In addition, it is my judgment that the refusal of any plan fiduciary—acting for himself or on instructions of others—

to permit the Secretary to conduct a "spot" audit on the premises of the plan at reasonable times, thus burdening the plan with the additional expense of producing its books and records at the offices of the Secretary, would constitute a breach of fiduciary responsibility under section 404 of the conference substitute, with respect to which both the Secretary and participants and beneficiaries would have remedies under section 502.

ARBITRATION OF BENEFIT CLAIMS

The Senate bill provided that each plan was to incorporate a procedure for arbitration of benefit claim disputes between the plan and participants and beneficiaries. The House bill contained no comparable provision. House conferees were opposed to the Senate provision on grounds it might be too costly to plans and a stimulant to frivolous benefit disputes, and at their insistence it was dropped in conference. I regret this decision since I believe the Senate bill would have provided a relatively inexpensive way for the resolution of minor benefit disputes for the many participants and beneficiaries who lack the resources to pursue their claims through the courts. Nevertheless, I am encouraged that the conferees agreed to direct the Joint Pension Task Force to study the feasibility of this approach further, and by the acceptance of provisions contained in the original Williams-Javits bill that would require a full and fair claims procedure—section 503—as well as the provisions authorizing the Secretary of Labor to enforce benefits denied in violation of law—section 502(b).

INDIVIDUAL RETIREMENT ACCOUNTS

As indicated earlier, generally there was not much difference between Senate and House provisions in this regard except the Senate restricted the annual tax reduction to 15 percent of earned income or $1,500, whichever was the lesser, while the House limits were 20 percent of earned income or $1,500, whichever was the lesser. While the conferees adopted the Senate approach on limitations, there were a number of improvements made by the House bill which were also accepted. Among these is a House provision authorizing unions to establish individual retirement accounts for their members.

It is my understanding that where a union currently sponsors a plan for its members financed exclusively from assessments levied on the membership, that all or part of the contributions made by the members through such assessments may qualify as an individual retirement account deduction if, subject to regulations of the Secretary of Treasury or his delegate, the plan is modified so as to permit a determination as to what amounts paid by the member could be treated as properly allocable to an individual retirement savings component of the plan.

In addition, it should be noted that individuals not admitted to membership in an employer plan—because of failure to satisfy the participation requirements or other legally valid reasons—are entitled to establish individual retirement accounts, although, as the joint explanatory statement of the conferees indicates, this result in no way affects the coverage requirements pertaining to qualified plans.

JURISDICTION

One of the thornier problems confronted by the conferees was the question of arranging a workable administrative and enforcement structure that would incorporate the historic role of the Internal Revenue Service with respect to qualified plans as well as the broader role visualized for the Labor Department in terms of safeguarding the interests of participants and beneficiaries and applying its expertise in connection with collectively bargained plans and matters impinging on the field of labor relations. By carefully assigning specific functions to each agency, the Senate bill tended to create a dominant role for each agency and minimize the degree of overlapping. The House bill, on the other hand, created extensive overlapping by assigning duplicate functions, particularly in the areas of participation, vesting, and funding, to both the IRS and the Labor Department. However, unlike the Senate bill, the House bill made a deliberate effort to solidify and mutualize the labor and tax interest in pension plans by adopting comparable labor and tax titles to the bill.

The final conference agreement represents an effort to adopt the framework of the House bill while also adopting the Senate approach of clearly defining the dominant roles of each agency. Very generally, IRS plays the dominant role in the initial stage of qualifying a plan and administering the participation, vesting, and funding standards. The Secretary of Labor takes the dominant role in protecting the interests of participants and beneficiaries in this connection and also in the subsequent compliance stage. The Secretary of Labor is also given a precise regulatory role with regard to certain aspects of participation, vesting, and funding which are impressed with a collective-bargaining or labor interest. In addition, the Secretary of Labor is provided the dominant administrative and enforcement role in the areas of disclosure and fiduciary standards, but with respect to prohibited transactions—as well as certain matters relating to qualification of actuaries—there is to be what is tantamount to joint regulation.

Obviously, such an elaborate interweaving of jurisdiction will require the utmost cooperation and coordination between the two agencies in order to avoid exposing the plans to unjustified administrative burdens. This is particularly true in such areas, for example, as prohibited transactions, where the two agencies share responsibilities and where the tax interest in voiding a particular transaction may not be identical to the labor interest or vice versa. In order to avoid "shopping" for opinions by plans as well as to minimize uncoordinated applications of the prohibited transaction rules, both agencies should give careful consideration to the recommendation of the conferees for establishing administratively a joint board which could provide "one-stop" service in this connection.

PREEMPTION OF STATE LAW

Both House and Senate bills provided for preemption of State law, but—with one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflict-

ing State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.

Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs. The conferees—recognizing the dimensions of such a policy—also agreed to assign the Congressional Pension Task Force the responsibility of studying and evaluating preemption in connection with State authorities and reporting its findings to the Congress. If it is determined that the preemption policy devised has the effect of precluding essential legislation at either the State or Federal level, appropriate modifications can be made.

In view of Federal preemption, State laws compelling disclosure from private welfare or pension plans, imposing fiduciary requirements on such plans, imposing criminal penalties on failure to contribute to plans—unless a criminal statute of general application—establishing State termination insurance programs, et cetera, will be superseded. It is also intended that a body of Federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans.

At the same time, the Secretary of Labor is authorized to enter into agreements with officials of State agencies to assist him in the performance of his functions under the conference substitute, which could include arrangements, for example, for auditing specific plans or assisting in the collection and monitoring of required plan data.

PERSONAL LIABILITY INSURANCE FOR TRUSTEES

The conferees decided to include a provision permitting either the employer, the union, the plan or the trustee himself to purchase insurance covering the personal liability of a trustee in the event of a trustee's breach of fiduciary responsibility. However, the conferees qualified the purchase of such insurance by the plan by requiring that the insurance policy permit recourse against the trustee by the carrier in the event of a claim involving a breach by the trustee. The purpose of this qualification is to spare the plan—and its participants and beneficiaries—the expense of exorbitant premiums in the absence of recourse provisions. There is no justification whatsoever for plan participants and beneficiaries having to shoulder the burden of subsidizing breaches of fiduciary responsibility committed by their trustees.

Some concern has been expressed that this provision might inhibit employer or union representatives from serving as trustees, however, similar provisions have existed under the bonding requirements of the Welfare and Pension Plans Disclosure Act since 1962 without any adverse effect. In any event, it is highly doubtful that persons unwilling to accept full fiduciary responsibility should serve in positions of trust and, quite obviously, nonrecourse policies of insurance can be purchased by the employer or union involved without shifting the economic burden to the participants and beneficiaries.

SUSPENSION OF RETIREMENT PAYMENTS

I should note that the conferees adopted a provision which permits a plan, subject to regulations of the Secretary of Labor, to suspend the payment of retirement benefits when an individual retiree returns to work covered by the plan. The purpose of this limited exception to what is generally a rule precluding divestiture of vested benefits is to protect unions against undercutting of wage scales and the additional expense generated by the need to subsidize retirement benefits for those who have left the work force as well as retirement benefits for those continuing to work—if such a course was required.

I should like to emphasize that regulations of the Secretary should protect retirees against mechanical suspension of their benefits because of their desultory reemployment in the industry or other de minimis reemployment contacts. The purpose of the suspension rule is to protect the legitimate interests of the union with respect to those persons who have really not retired and not to penalize retirees where, on balance, the interests of the union are not adversely affected to a substantial degree. Thus, we expect the Secretary to erect a "rule of reason" to govern that period of a retiree's reemployment which would warrant suspension of benefits so as to avoid harsh results.

TRIBUTE TO COLLEAGUES AND STAFF

Mr. President, the development of the landmark pension reform bill, was the result of dedicated efforts by many Senators and staff experts. All the members of the Senate Labor Committee played a vital part in contributing to the final passage of this legislation and American workers should be gratified to have such responsive and responsible representatives working on their behalf. The members of the Senate Labor Committee who participated in the formulation of the original Williams-Javits bill—the bill which led to the final Senate-House conference report—are Senator Harrison A. Williams, Democrat of New Jersey, chairman; and Senators Jennings Randolph, Democrat of West Virginia; Claiborne Pell, Democrat of Rhode Island; Edward M. Kennedy, Democrat of Massachusetts; Gaylord Nelson, Democrat of Wisconsin; Walter F. Mondale, Democrat of Minnesota; Thomas F. Eagleton, Democrat of Missouri; Alan Cranston, Democrat of California; Harold E. Hughes, Democrat of Iowa; William D. Hathaway, Democrat of Maine; Jacob K. Javits, Republican of New York; Peter H. Dominick, Republican of Colorado; Richard S. Schweiker, Republican of Pennsylvania; Robert Taft, Jr., Republican of Ohio; J. Glenn Beall, Jr., Republican of Maryland; and Robert T. Stafford, Republican of Vermont.

Special recognition is also due to the members of the Senate Finance Committee whose cooperation and participation in merging the tax provisions of the Senate Finance Committee bill with the Senate Labor Committee bill was indispensable to the final attainment of pension reform. Major credit is due to Senators Russell B. Long, Democrat of Louisiana; Gaylord Nelson, Democrat of Wisconsin; Lloyd Bentsen, Democrat of Texas; Wallace F. Bennett, Republican of Utah; and Carl T. Curtis, Republican of Nebraska—especially

Senator Nelson, who as chairman of the Pension Subcommittee of the Finance Committee did a marvelous job in shepherding the legislation through the Finance Committee, Senator Bentsen, who was so vigorous in promoting comprehensive pension reform on behalf of the Senate Finance Committee, and Senator Carl Curtis, who was tireless in successfully advocating the adoption of individual retirement saving accounts for workers lacking private pension coverage for the self-employed.

In addition, a special debt of gratitude is owed to Senators Robert P. Griffin, Republican of Michigan, and Vance Hartke, Democrat of Indiana, for their long-standing advocacy and support of pension reform legislation. Senator Griffin was the author of a number of pension reform bills and testified effectively for the adoption of pension reform. Senator Hartke was the original sponsor of a plan termination insurance bill and that bill served as the model for the final legislation in this area which resulted.

On the House side monumental efforts were made by Congressman John H. Dent, of Pennsylvania, chairman of the House Labor Subcommittee and long a champion for effective pension reform. Similarly the minority members of the House Labor Committee, John Erlenborn, of Illinois, and Herman T. Schneebeli, of Pennsylvania, of Ways and Means were indefatigable in their support and encouragement for pension reform legislation. Also, a fantastic job was done by the acting chairman of the House Ways and Means Committee, Congressman Al Ullman, Democrat of Oregon.

The roster of Congressmen who were most active in participating in this great legislative effort were Frank Thompson, Democrat of New Jersey; Phillip Burton, Democrat of California; Albert Quie, Republican of Minnesota; Ronald A. Sarasin, Republican of Connecticut; James Burke, Democrat of Massachusetts; Dan Rostenkowski, Democrat of Illinois; Harold Collier, Republican of Illinois; Joel T. Broyhill, Republican of Virginia; and Congresswoman Martha Griffiths, Democrat of Michigan.

And a special commendation is due to the chairman on the House Labor and Education Committee, Carl Perkins, Democrat of Kentucky, who saw to it that this legislation received the high priority it deserved.

No words of praise are sufficient to adequately describe the remarkable staff work involved in the writing of this legislation. As we all know, the staff members are the unsung heroes and when it came to such complex legislation as this they performed magnificently. I would like to pay a special tribute to Mike Gordon, minority counsel of the Senate Labor Committee, who led the team superbly, and the staff members associated with him—Nancy Shakman, Steve Holtzman, Chris Randolph, Ellen Wessler, and Suzanne Marciano.

Also I would like to give very special credit to Frank Cummings former counsel to the minority of the Senate Labor Committee, who will take a place in the history of labor for having developed the original legislation I proposed on this subject; and to Gene Truttleman also a former counsel for his great help.

In addition, a word of thanks for the efforts of the following staff

members: Dave Marston, Senator Schweiker; Roger King, Senator Taft; and Joe Carter, Senator Beall.

The majority staff members of the Senate Labor Committee also performed in a superlative manner, and both minority and majority worked closely together with the highest degree of professional competence. I would like to pay special tribute to Bob Nagle, former general counsel of the Senate Labor Committee, whose leadership and legal talents were crucial to the final push on this legislation. Both the chairman and I will miss him sorely and I wish him the very best in his private law practice. Also, Mario Noto, staff director, and Mike Schoenenberger made great contributions and their devotion and dedication were in evidence all along the way.

On the Finance Commitee, Bob Willan and Mike Stern worked long hard hours, as did David Allen, staff assistant to Senator Bentsen, and Richard Fay, legislative assistant to Senator Nelson. All of them rendered invaluable assistance.

Four members of the Senate and House Legislative Counsel Offices deserve special recognition for their exceptional competence at drafting a very complex bill. They are Lloyd G. Ator, Jr., Danny H. Murray, Robert Nordhous, and Pope Barrow.

One of the most superb staff jobs I have ever seen was that of Larry Woodworth, the staff director of the remarkable Joint Committee on Internal Revenue Taxation. To him we owe an enormous debt of gratitude for his exceptional skill in organizing and coordinating a highly complex enterprise. The following members of his staff performed brilliantly: James Billinger, Bob Blum, Herb Chabot, Arthur Feffer-man, Howard Silverstone, and Robert Warden.

The most important and effective job was also accomplished by the following staff members of the House Education and Labor Committee: Donald Baker, general counsel, Bob Vagley, Vance Anderson, Russ Mueller, J. Charles Sheerin, Robin Reed, and Julie Dominick. I also commend all the staff of the House Ways and Means Committee for their excellent work under the supervision of Chief Counsel John M. Martin, Jr., and Minority Counsel John K. Meagher.

Finally, I should like to note that we have over a period of years received a great deal of technical assistance from many experts in the Government and while it is not possible to mention all of the names, I would like to give credit to the following from the Department of Labor: Under Secretary of Labor Dick Schubert, Assistant Secretary Paul Fasser, Solicitor of Labor Bill Kilberg, Steven Sacher, and Henry Rose. From the Treasury Department we owe appreciation to: Former Assistant Secretary John Hall, Assistant Secretary Fred Hickman, former legislative assistant Bob Felgarden, Legislative Counsel Dave Foster, Chief Actuary Don Grubbs, Ira Cohen, and Bob Lieber. Assisting from the Bureau of Labor Statistics were: Arnold Strasser, Harry K. Davis, and Don Landay; and of great assistance from the Library of Congress were Peter Henle and Ray Schmidt.

Last, but not least, I would like to salute those members of the press and media who followed the pension reform story closely and who by their conscientious reporting kept the American public fully informed as to the meaning and significance of this historic legislation.

CONCLUSION

Mr. President, we have reached the end of a very long road. In retrospect, I doubt that anyone could have foreseen the enormous amount of hard work and dedication required to put pension reform legislation on the U.S. statute books—and even as recently as a year ago there were many who would not have given a plugged nickel for the chances of this legislation becoming law. It is a tribute to the leadership of both Houses, to the many Senators and Congressmen from both sides of the aisle who struggled incessantly to move a pension reform bill ahead, and to the superlative efforts of the staffs of the Senate Labor and Finance Committees, the House Labor and Ways and Means Committees, and the Joint Committee on Internal Revenue Taxation, that we can today close the book on the final chapter of pension reform.

Mr. President, we have given our all—we have done our very best—to make this bill into strong and sound legislation. We have fought as hard as we knew how to make this a good bill—and it is a very good bill—and now we shall be judged on what we have done. I do not shrink from that judgment; I welcome it because I know as well as I know anything that the people will judge us fairly and impartially by how close we came to fulfilling their needs—and on that basis I have no doubt that our effort will be appreciated not only by this generation of workers but by generations of workers to come.

The reason is that this legislation will make better pension plans and undeniably, better pension plans will make a significant contribution to the economic security of large numbers of older people who need a much more realistic level of living in retirement. Even a substantially liberalized Social Security could not do the job private pensions can do.

Right now—even with recent substantial increases in its benefits—social security is just barely enough to support people, even at poverty levels. Nor do people save or invest enough money over a lifetime. The result is they cannot really cope with soaring food costs or any other forms of inflation. We have even had the spectacle of seeing some retired people turn into shoplifters, just to obtain a decent diet. And that is only one example of what the lack of adequate old-age income can do to people.

Pensions also have a great deal to do with morale—and the erosion of worker morale has become a matter of grave national concern. We need to find ways to give workers a piece of the action, to improve their incentives. Judging from their complaints about their pension plans, such plans certainly are not doing much to help morale at present.

Under this bill, the Congress has developed a fair and feasible system of private pension plan regulation. And under this regulation, private plans will develop more rapidly than in the past because the Congress will have assured that pension promises are kept and reasonable expectations built upon those promises are not disappointed.

Private pension and welfare reform legislation is not a panacea for dealing with the more subtle undercurrents of social unrest; but the enactment of this legislation will clearly establish a more positive

climate of respect for, and affirmation of, the worker's contribution to our economic progress. The establishment of this climate is indispensable if we are to maintain our economic growth and build greater confidence in our Nation's ability to weather the economic problems we now confront.

Mr. President, I yield the floor.

PENSION PROTECTION AT LONG LAST

Mr. HUMPHREY. Mr. President, we are taking final congressional action today on the pension reform bill. There is no question that this legislation, which protects the pensions of as many as 30 million workers, will stand as one of the most important domestic legislative accomplishments of the 93d Congress.

This bill goes a long way toward remedying the glaring deficiencies, as well as some of the less obvious abuses, of the current private pension system. There is no doubting the need for this reform.

Too many workers have discovered, upon retirement, that their pension fund had gone broke or was inadequately funded.

Too many workers have contributed to pension funds for years, only to see their future security put in serious jeopardy when their employer went out of business.

Too many workers have felt compelled to forgo better job opportunities simply to preserve their right to pension benefits with their current employer.

And, too many workers, unable or unwilling to pack up and move their families all around the country following their employer, have seen their pensions vanish.

The pension reform bill establishes a new Federal agency, the Pension Benefit Guarantee Corporation—PBGC—to protect employees from losing their pensions if a pension plan fails. The PBGC would be financed initially by employers contributing, in most cases, $1 to the Corporation for each individual covered under its plan. The PBGC would pay out benefits to employees who have been covered by a plan which failed. The benefits to any individual in such a case could not exceed $750 a month.

A voluntary system is established to enable the transfer of benefits when an employee changes jobs. The Social Security Administration will keep the records for this system.

Another important feature of the bill is its "vesting" requirements. Under the pension reform bill, one of three plans for guaranteeing, or "vesting," pension benefits of employees must be adopted. An employer can provide 100-percent vesting on the 10th anniversary of a worker's employment. In other words, after 10 years of service the worker is entitled to full pension benefits. The employer also has the option of building up pension benefit vesting gradually, according to two specified formulas. In no case, however, could a worker, regardless of age, be less than 50 percent "vested" after 10 years of employment. Of course, this guaranteed portion of a worker's pension can never be lost, regardless of whether a worker remains in the pension plan or not.

The pension reform bill also sets tough new standards for the handling of pension funds. One major provision prohibits more than 10

percent of a pension fund from being invested in the employer's own stock, except for profitsharing types of plans.

This bill also benefits self-employed individuals. It provides that these people can set aside, and deduct from their taxable income, up to 15 percent of their earnings, with a maximum deductible of $7,500 a year. In order to encourage individual pension plans, any worker may deduct up to 15 percent of his income, up to a $1,500 annual limit, if it is set aside for retirement.

Mr. President, I strongly support this vital legislation. The problems with our pension system have been with us a long time and have cost many of our workers and their families dearly. The corrective measures we send to the President for his signature today are long overdue.

I am particularly pleased that this bill will not only insure benefits in the case of pension fund collapse, but will establish the strict new standards of operation that will substantially reduce the frequency of pension plan failure in the future.

Mr. President, I compliment the Senate Committee on Labor and Public Welfare and the Senate Finance Committee on a difficult job that has been extremely well done.

Mr. LONG. Mr. President, the pension legislation now before us represents one of the most substantial achievements of the Congress in the current session or for that matter in any session. This bill will aid many millions of employees to receive more secure and meaningful pensions. In fact, the beneficial effects of this bill will be enjoyed not only by the present generation but by many generations to come.

I think that there have been few bills that have involved as much cooperative effort in the Congress as this bill. As you recall, the legislation was adopted first in the Senate after being considered by both the Finance Committee and the Committee on Labor and Public Welfare. This cooperative effort is one of the major reasons why we have a bill on the Senate floor today and I want to acknowledge the very important role that Chairman Williams, Senator Javits, and all the members of the Labor and Public Welfare Committee played in getting this bill out.

Similarly, both the Ways and Means Committee and the Education and Labor Committee of the House considered the House-passed version of the bill.

So what we have here today—the conference agreement on this legislation—represents the combined wisdom and expertise on pension matters in both Houses of the Congress. In the case of some of the provisions, we have deferred to the House; in other cases, the difference was resolved by accepting the Senate provision. However, I want to stress that the conference agreement should not be viewed as one side giving in to the other on particular provisions. In most cases, the particular way in which the issues were resolved reflects the fact that we were able to give more study to them. In a very sense, many of the House provisions differ from ours, because they were able to build on our work. In conference, we have made still further improvements while retaining the basic objectives in our bill.

In saying this, I recognize that there are some provisions in the bill which some Members think can be improved. In fact, I know of a few

provisions which I might prefer to change. But I think that it is not possible in legislation so complex as this to secure completely unanimous agreement on each and every detail. What really matters is that we have developed here a successful pension bill—a bill that will achieve its overall objectives.

One of the most important aspects of this bill is that it achieves reform within the basic framework of the present tax treatment of pension plans which is designed to encourage the growth and development of voluntary plans by employers. The legislation continues the favorable tax treatment that has been so essential in encouraging the growth of nondiscriminatory plans over more than three decades. Indeed, we have actually expanded this favorable tax treatment in some respects by increasing the amounts that self-employed people can set aside in their own retirement plans and by allowing individuals not covered by pension plans to set up a new type of individual retirement plan for themselves.

In order to qualify for the favorable tax treatment, pension plans will have to satisfy the present type of rules in the Internal Revenue Code which are designed to confine the special tax treatment to plans which do not discriminate in favor of highly paid employees as compared to the rank and file employees. Under this legislation, to secure the favorable tax treatment, plans will also have to satisfy additional requirements which are designed to protect employees and to make pension plans a more effective vehicle for providing retirement income. These new requirements pertain to coverage, vesting, funding, fiduciary requirements, and plan termination insurance.

The new requirements have the virtue of providing adequate protection for employees at only moderate additional financing costs for most plans. We who have worked intimately on this legislation have always kept in mind that private pension plans depend for their very existence on voluntary action. We know that new pension plans will not be adopted and that existing plans will not be expanded and liberalized if the costs are made overly burdensome, particularly for employers who generally foot most of the bill. This would be self-defeating and would hurt rather than help the employees for whose benefit the legislation is designed. So it is no accident that the additional costs of the new requirement are generally very moderate. The additional costs resulted from the new minimum vesting requirements in the bill, for example, are expected to range from zero to 1.5 percent of payroll.

The full details of the bill are amply described in the joint statement of the managers of the bill which is a part of the conference report. Let me describe some of its highlights.

The conference bill follows the House bill in providing that qualified plans may not, because of age or service, exclude any employee who has attained age 25 and has completed 1 year of service. The conferees also accepted a House provision permitting a plan to require 3 years of service for all employees before participation if the plan provides full vesting immediately on participation. In addition, any plan which is maintained exclusively for employees of a tax-exempt or governmental educational organization which provides full and immediate vesting for all participants may have a participation requirement of age 30, with 1 year of service.

In the vital area of vesting of benefits from employer contributions, which is essential to assure that employees will not be subject to unreasonable forfeitures, the bill provides three alternative vesting options in order to give the hundreds of thousands of retirement plans flexibility to provide adequate vesting protection for their covered employees in the light of the various circumstances and conditions confronting them.

Under one option, a qualified plan would be required to provide an employee with vested rights to at least 25 percent of his accrued benefits from employer contribution after 5 years of covered service, plus an additional 5 percent for each of the next 5 years and 10 percent for each of the next following 5 years. This means that under this option, at least 50 percent of the employer-provided benefits must be vested after 10 years of covered service and 100 percent vested after 15 years of covered service.

A second vesting option provides employees a 100-percent nonforfeitable right to accrued benefits derived from employer contributions when they have achieved at least 10 years of service. Both of these options were in the Senate bill.

A third option permits firms which wish to provide faster vesting for their more mature employees to do so by taking into consideration the age of the employee as well as his service for purposes of computing his vested rights. Under this option, the plan provides a covered employee who has at least 5 years of covered service a vested right to at least 50 percent of the accrued benefits financed by his employer's contributions when the sum of his age and years of service equals 45; the minimum required vesting percentage would thereafter be increased by 10 percentage points a year in each of the following 5 years. However, under this option, an employee who has completed at least 10 years of service must be given a vested right to at least 50 percent of the accrued benefits after 10 years of service and an additional 10 percent vested right for each year thereafter. This option is a modification of a House bill provision.

In general, the vesting requirements of the conference bill apply to all accrued benefits, including those which accrue before the effective date of the provision. Years of service prior to the effective date also are to be counted for purposes of determining the extent to which the employee is entitled to vesting.

The participation and vesting standards adopted by this legislation generally become effective for new plans on the date of enactment; for existing plans, these standards generally become effective in plan years beginning after December 31, 1975. The later effective date for existing plans was provided in order to give them time to make the necessary changes to conform to the new requirements.

The provisions applicable to certain supplementary benefits provided pursuant to a collective bargaining contract existing on January 1, 1974, become effective at the termination of the contract but not later than plan years beginning after December 31, 1980.

Also, to provide additional flexibility in regard to vesting standards, the Secretary of Labor is given the authority to prescribe temporary variations in the vesting standards under certain conditions where regular vesting standards would be harmful to the plan and to the covered employees.

The minimum funding standards in the conference bill, which are designed to help assure that plans will accumulate sufficient funds to pay their pension obligations when they fall due, represent an improved version of the House provisions, which in turn build on the Senate provisions. These standards generally apply to private defined benefit plans—that is, to plans which specify that participants are to receive a designated amount of benefits. Profitsharing and stock bonus plans are not subject to the funding standards since these plans do not specify the amount of benefits but instead pay out whatever benefits the funds will purchase on the date the benefits begin.

Under the general funding standards, generally employers must pay normal costs currently and amortize their accrued past service liabilities in level payments over no more than 30 years. A similar 30-year amortization period is required for past service liabilities arising as a result of the effective date.

However, in recognition of the fact that large numbers of plans assumed heavy past service liabilities prior to any requirement to amortize such liabilities, plans in existence on the effective date of the legislation are allowed a longer period—up to 40 years—to amortize past service liabilities existing at the beginning of the first plan year to which the requirement applies. In addition, multiemployer plans are allowed to amortize all past service liabilities, including those created after the effective date of the legislation, over a period of up to 40 years. This recognizes that multiemployer plans generally have an added element of financial strength in that their contributions come from a number of employers who, as a group, as less likely than comparable single employers to experience business difficulties.

The conference bill allows experience deficiencies to be funded in level amounts over a period of up to 15 years for single-employer plans and up to 20 years for multiemployer plans.

As under both the Senate bill and the House bill, penalties in the form of an excise tax on the employer are imposed to the extent that the amounts in the plan fall short of those called for under the funding standard.

However, relief measures are provided to make sure the funding requirements do not cause hardship and do not result in the disruption of pension plans.

For new plans, the funding provisions are effective for plan years beginning after the date of enactment of the bill. For existing plans, the funding provisions are effective for plan years beginning after December 31, 1975.

For collectively bargained plans—both single-employer and multiemployer plans—the funding standard is not effective until the termination of a contract existing on January 1, 1974, but not later than plan years beginning after December 31, 1980.

In place of a Senate provision establishing a central portability fund, we provided that individuals who are separated from service will be able to transfer their pension funds to tax-exempt individual retirement accounts—which I shall describe later.

The conferees also improved a number of Senate and House provisions which are vital for the protection of the pension rights of employees. This includes full disclosure of the features and operation of pension plans. Standards are established to govern the conduct of

fiduciaries of pension plans to protect against possible misuse of pension funds. Fiduciaries are required to comply with a prudent man rule, and transactions likely to prove inimical to the interests of the plan participants are specifically prohibited. Here, the force of both the labor laws and the tax laws are brought to bear to protect against abuses in regard to pension funds. The labor laws provisions provide rules and remedies similar to those under traditional trust law to govern the conduct of fiduciaries. Also, the tax law provisions apply an excise tax on disqualified persons who violate the new prohibited transaction rules. In addition, plan investments must meet a diversification requirement unless, under the circumstances, it is clearly not prudent to do so. In this connection, limitations are placed on the investment of pension plan assets in employer securities.

The conference bill provides for the establishment of a system of plan termination insurance which is superior to the comparable provisions in either the House or the Senate bill. A Pension Benefit Guarantee Corporation to administer this insurance is set up within the Labor Department with a Board of Directors composed of the Secretary of Labor as Chairman and the Secretaries of Commerce and Treasury. The plan termination insurance is mandatory for private defined benefit plans that either affect interstate commerce or that are qualified under the Internal Revenue Code. However, the plan termination insurance does not cover H.R. 10 plans or plans established by personal service corporations which have fewer than 25 participants. The insurance is financed by premiums paid by covered plans. In addition, the Pension Benefit Guarantee Corporation is authorized to borrow $100 million from the U.S. Treasury.

The insurance benefits are, of course, to be paid only where the assets of the terminated plan are insufficient to pay the specified benefits under the plan. The insurance covers benefits equal to 100 percent of average wages during the individual's highest paid 5 years, but not more than $750 a month.

However, where the plan provision providing the benefit had been in existence for less than 5 years as of the date of the termination of the plan, coverage is phased in at the rate of 20 percent per year until the benefit is fully covered after it has been in effect for 5 years.

Employers are liable for benefits paid under the insurance program up to 30 percent of their net worth. However, insurance is to be made available to employers to protect themselves against this contingent liability.

In order to provide prompt and effective protection for the employees concerned, insurance coverage for plans established by single employers becomes effective for plans terminated after June 30, 1974. Coverage for multiemployer plans generally starts for terminations after December 31, 1977. However, to prevent hardship, the Pension Benefit Guarantee Corporation, subject to certain limitation, is given discretionary authority to provide benefits to employees covered by multiemployer plans which terminate after the date of enactment of the legislation and before January 1, 1978. However, such discretionary benefits cannot be paid if they would jeopardize the coverage of multiemployer plans terminated in 1978 and later years.

Provision has also been made for effective coordination between the

Treasury Department and the Labor Department in enforcing the standards imposed by the bill. Here the emphasis is on bringing to bear the full enforcement powers granted to both Departments under the bill as well as avoiding duplication of effort for both the administering agencies and plan administrators.

Finally, the conference bill contains a number of provisions which are designed to provide more rational and equitable tax treatment under pension plans. These provisions are generally consistent with the objectives of the comparable provisions in the Senate bill, although, in a number of cases, the House provisions have been taken, and practically all of the provisions have been improved technically.

The conference bill goes far to remove a longstanding inequity by granting individuals who are not covered by any kind of qualified pension plan a limited tax deduction for their retirement savings. Such individuals are allowed to take deductions for annual contributions to a new type of individual retirement plan up to 15 percent of earned income or $1,500, whichever is less.

A second set of provisions substantially reduce the longstanding discrimination against the self-employed resulting from the fact that their retirement savings under H.R. 10 pension plans has been limited severely while comparable pension limits do not apply to their corporate counterparts. This change removes the present inducement for self-employed people to incorporate merely for pension purposes by increasing the maximum deductible H.R. 10 contributions a self-employed person may make on his own behalf from the present level of 10 percent of earned income up to $2,500 a year to 15 percent of earned income up to $7,500 a year.

A third set of provisions makes the tax laws regarding pension plans fairer by limiting the amount of the contributions or benefits that can be provided to any individual under such a plan. The fact that present law does not provide such specific limitations has made it possible for extremely large contributions and benefits to be made under qualified plans for some highly paid individuals. While there is, of course, no objection to large retirement benefits in themselves, it is not appropriate to finance extremely large benefits in part at public expense through the use of special tax treatment.

Under defined contribution plans—money-purchased pension plans and profitsharing plans—generally annual additions to an employee's account cannot exceed 25 percent of the employee's compensation or $25,000. whichever is less.

For plans which provide defined benefits, the limit is in terms of the amount of annual benefits that may be paid to a participant. More specifically, the annual benefit paid under such plans cannot exceed 100 percent of the participant's average compensation for his highest 3 years of earnings or $75,000, whichever is less. Where the annual benefit starts before age 55, the $75,000 annual limit—but not the 100 percent compensation limit—on benefits generally is adjusted downward actuarially.

The contribution and benefit limits are applied in a way which prevents any individual from securing higher limits for himself merely because he is covered by several retirement plans of the same type financed by the same employer. For example, for purposes of applying these limits, all defined contribution plans established by

an employer are combined and treated as one defined contribution plan.

Also, if an individual is covered by both a defined contribution plan and a defined benefit plan established by his employer, then there is to be a coordination of the limits for these two types of plans. In this case, the sum of, first, the percentage utilization of the maximum limit under the defined benefit plan, and second, the percentage utilization of the maximum limit under the defined contribution plan cannot exceed 140 percent.

Because of the vital importance of maintaining the real value of retirement benefits, the bill generally provides for cost-of-living adjustments in these limitations.

The bill provides adequate time for adjustment to the new limits on benefits and contributions under retirement plans. In general, these limits apply to contributions made or benefits accrued in years beginning after December 31, 1975. However, to ease the transition to the new rules, an active participant in a defined benefit plan on October 2, 1973, will be permitted to receive an annual benefit which exceeds $75,000 a year based on his annual rate of compensation and the plan provisions in effect on that date, provided the benefit does not exceed 100 percent of his annual compensation on October 2, 1973.

The conference bill provides a new, simplified method of taxing lump-sum distributions under qualified plans to replace the treatment provided under the 1969 act which has proved to be unadministrable.

Under the new provision, the portion of the distribution representing pre-1974 value receives capital gains treatment; the balance of the lump-sum distribution is taxed as ordinary income under a separate tax schedule with 10-year averaging. In this way, the tax payable on the distribution generally is to be no greater than the amount the taxpayer could expect to pay if the income were spread over his remaining life expectancy.

Finally, the conference bill adopts, with certain modifications, a House provision which suspends proposed Internal Revenue Service regulations in regard to so-called salary reduction plans in existence on June 27, 1974, to give the Congress an opportunity to study the matter further.

From what I have said, I think it is apparent that this bill deserves the support of every Member of this Chamber. I urge that the conference report be approved.

Mr. President, in closing let me extend my thanks to all of those Senators who participated and made contributions to the formulation of this fine piece of legislation. My colleagues on the Finance Committee, Senators Nelson and Bentsen on the Democratic side and Senators Curtis and Bennett on the Republican side, have made very substantial contributions to the improvement of the measure, as have those serving on the Committee on Labor and Public Welfare, who have worked for years now in initiating and moving this legislation toward enactment.

I thank those on the committee staffs, and in particular I thank the chief of staff of the Joint Committee on Internal Revenue Taxation, Mr. Larry Woodworth, for the fine work he did in bringing together so many divergent points of view to reach agreement in a fashion which has retained, in almost all cases, the best that everyone has to

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offer, while shunting aside those ideas which deserve further study before we seek to enact them into law.

We had working with us in this area the staff of the Committee on Labor and Public Welfare as well as the staff of the Committee on Finance and the staff of the Joint Committee on Internal Revenue Taxation, and the staffs of both the Committee on Education and Labor and the Committee on Ways and Means on the House of Representatives side.

In addition to those who have been mentioned, Mr. President, I believe the very fine contribution made by Mr. Bob Willan, of the Finance Committee staff, should be mentioned. The efforts of all are appreciated, both those who have been mentioned in the debate and those who, because of the large number of people who have made contributions, might not have been mentioned. We appreciate very much the contributions made by all of them.

Mr. CURTIS. Mr. President, I thank my distinguished chairman for his kind remarks.

I, too, wish to pay my compliments to the other Senators from all the committees which participated in this measure, and to express my gratitude to the staff members, those who have been mentioned and otherwise, and for the excellent cooperation we received from the Treasury.

I concede the eloquence and the great interest of the members of the Committee on Labor and Public Welfare. I think this record should show, however, that the whole system of private pensions is a tax matter. Without the tax provisions, they would all fall. If the tax provisions prevail, a great portion of the private sector will work out the other problems satisfactorily, by negotiation and otherwise.

So this matter is basically a tax matter, and the Finance Committee's jurisdiction must never be waived.

Mr. President, after many months of work, the legislation relating to private pensions has now been completed. I recommend the adoption of the conference report. By private pensions we refer to voluntary pension programs as contrasted to government retirement plans.

Over a period of many years great numbers of American companies have set up a pension plan for their officers and employees. The measure before us relates in part to those plans. A few years ago the so-called "Keogh Plans" were adopted for certain self-employed persons and their employees. This measure makes a much needed change in reference to those plans also.

The most far-reaching portion of this new legislation is that which it does for all individuals in the country who are not covered by any pension plan at all.

The basis for private pension rests in our tax law. Company pensions are maintained because of the generous tax treatment that is accorded. The money that is paid into a retirement fund is tax-free. That retirement fund is invested and the earnings from this investment, such as interest, dividends, capital gains, and the like, are likewise tax-free.

Up to now about one-half of the gainfully employed persons in the United States are covered by a pension plan which receives this very generous tax treatment. I favor that generous tax treatment, I am

concerned about the other half of our working force who are treated much more harshly.

If an individual not covered by a pension plan wishes to save money for his retirement, he pays taxes on every cent that he earns and then saves afterward. If such an individual is able to save for his retirement, the earnings on his savings are taxed at the regular rates.

I want to give you some figures that illustrate this unequal tax treatment received by our citizens. Let us take the case of the individual who does not have the benefit of a pension plan. Let us assume that he is able to earn $50 for saving and that he is in the 19-percent tax bracket. His $50 earned would be reduced to $40.50 because of the tax. We will assume that his savings earn 5-percent interest. If such an individual earned $50 per month for saving and kept it up from age 35 for 30 years or until he was 65, he would accumulate $27,498. This would pay him an estimated life annuity at age 65 of $221 a month.

Now if another individual earns $50 to be saved, and he has the benefit of our tax laws for pension plans, the $50 is not taxable and so the full amount goes into his retirement fund. The earnings from his $50-a-month saving likewise are tax-free. This person with the generous tax treatment would over the same 30-year period accumulate $39,864, or enough to pay him an estimated lifetime annuity at age 65 of $319.

Or, let us consider the case of an individual who earns $100 a month to be saved and who is in a 28-percent tax bracket. Such a man would, over a similar 30-year period, assuming the same rate on the earnings, accumulate $45,360 or enough to provide him with an estimated lifetime annuity at age 65 of $364 a month.

But, if this last-mentioned individual had the same tax treatment as company pensions have had over this period of time, he would accumulate $79,728, or enough to provide him with an estimated lifetime annuity at age 65 of $597.

The situation has now been corrected. This pension bill so amends the tax laws to provide that all individuals who are not covered by organized pension plans shall have the same tax treatment as if they were. This is something for which I have fought for years. Over a period of some time I have introduced bills proposing this very thing. It will mean much to at least one-half of our gainfully employed people in the United States who are now discriminated against. The Treasury Department has endorsed this proposal.

The new law provides that any person not covered by a regular pension plan may place money from his earned income into a fund for his own retirement, and have it as a tax deduction or free of tax. He may contribute to such a retirement fund and his contributions will be tax-free. The limit on the amount of tax-free contributions is $1,500 a year or 15 percent of his earned income, whichever is lesser. This means that if a person who does not have the benefit of an organized pension plan can save some money in amounts subject to these limits, he can subtract those savings from his gross income before paying taxes. Furthermore, the income on his savings will not be taxed. The law provides for a wide variety of plans that an individual can use, such as a special Government savings bond, insurance contracts, or an approved arrangement with a bank or a trust company.

I mentioned that about half of our gainful employed people do not have the benefit of an established pension plan. This is the national

average. In Nebraska there are probably many more than half of the people who do not have the benefits of a private pension plan because we are an agricultural State. This new law will benefit everyone—employees, employers, farmers, and other self-employed—everyone. It will promote thrift. It will provide tax equality. It will enable people to provide for their own old age and they will be less dependent upon Government programs.

Mr. President, are we under the control of time?

The PRESIDING OFFICER. We are not.

Mr. CURTIS. I thank the Chair.

Mr. WILLIAMS. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WILLIAMS. Is there a time fixed for a vote?

The PRESIDING OFFICER. There is a time fixed for a vote.

Mr. WILLIAMS. There is no control of time so a vote will come on this at 1:45.

Mr. JAVITS. Mr. President, will the Senator yield so that we can give him the schedule? Senator Bentsen needs 5 minutes and Senator Taft needs 5 minutes.

Mr. CURTIS. I will finish very shortly. I was not told that there was any control of time. I was made aware of a vote at 1:45.

Some much needed changes are made in reference to the Keogh plans. These plans are also referred to as H.R. 10 plans. Most importantly the limits are raised. At the present time, the maximum that can be placed into a Keogh plan and receive the tax benefits is 10 percent of earned income or not to exceed $2,500. This measure before us today raises the 10 to 15 percent and the $2,500 maximum to $7,500 per year.

Under the Keogh plan, an employer must make the same percentage contribution for his employees as he makes for himself. In other words, if a self-employed employer puts 10 percent of earned income into the plan for himself, he must contribute 10 percent of his employees salary into the plan. A significant modification is made in this regard. It is the requirement that the employer can only base his plan on his first $100,000 of earned income. It would work out this way:

If the self-employed employer had an earned income of $250,000 a year and wished to place $7,500 into his retirement, it would only amount to 3 percent of his earnings. Without this modification, he would, therefore, be required to contribute only 3 percent of the employees salary into the fund. By requiring the employer to figure his own contribution on the basis of not to exceed $100,000, his contribution of $7,500 would amount to 7½ percent. This new provision would then mean that his contribution for his employees would have to be 7½ percent of their salary. I believe that this is a fair arrangement.

Now I wish to say something about company plans. This part of the legislation is primarily regulatory in nature.

It has been our goal in this legislation to set minimum national standards. We have not undertaken to write the rules for an ideal pension system but rather to prescribe minimum standards. I shall mention some of these standards which are of major importance.

This legislation sets forth the rules for participation in qualified pension plans. The plan may not exclude from participation, on account of age or service, employees who are 25 years of age or have 1

year of service, whichever occurs later. This would mean, for instance, that if the employee is 23 years of age, he would have to have 2-years service before participation would be required. If the employee was 25 or more, it would take just 1 year of service to entitle him to participation. In determining vesting rights, the proposal permits a look back and credit for employment from age 22.

Another important minimum standard relates to vesting. There are three options, any one of which will meet the minimum standard. Option No. 1 is referred to as graded vesting. This provides for 25-percent vesting after 5 years of service, with 5 percent per year for the next 5 years. This means 50-percent vesting in 10 years. Thereafter, vesting is increased by 10 percent per year.

Option No. 2 provides for full vesting in 10 years.

Option No. 3 is the "rule of 45" with certain modifications. Under the rule of 45, an employee is 50 percent vested when his age plus his years of service equal 45 or more. Thereafter, vesting is increased by 10 percent per year. For instance, someone who is 35 years of age and has worked for 10 years is 50 percent vested and in another 5 years would be fully vested. This is subject to the following modifications:

First. Someone entering employment within 5 years of retirement age can be execluded. Without this modification, older men might not be employed. The modification also has an application in reference to options Nos. 1 and 2.

Second. The rule of 45 also provides that there must be a minimum 5-years' service. In other words, someone entering employment at 43 would not become vested until age 48.

Third. The rule of 45 also provides that a participant with 10 years service is entitled to 50 percent vesting, regardless of age.

Employment service prior to age 22 can be disregarded for the first two options of vesting, but this only can be disregarded under option No. 3 if he is not a participant in the plan.

Accrued benefits should be considered along with vesting. The conferees approved the Senate rule for measuring accrued benefits.

$$\frac{\text{Actual years of service (Numerator)}}{\text{Years to normal retirement (Denominator)}}$$

In other words, if an employee enters employment at 40 years of age and has 25 years to go for normal retirement age, the 25 years becomes the denominator. After he has worked under the plan for 20 years—at age 60—20 years becomes the numerator. The accrued benefits in such a case would be 20 over 25, or one-fifth of what that employee would have earned if he had stayed on to normal retirement age.

The House rule for accrued benefits was likewise adopted and it has two alternatives. First, 3 percent of the maximum benefit multiplied by the years of service. Second, permission is granted for a limited degree of "back loading," permitting larger contributions in the later years with a limit of 133⅓ percent of a prior year's contribution.

The legislation provides for minimum standards for funding of private pension plans. The contributions to the fund each year are required to cover the normal cost for that year's payout plus an amortization for past service costs. In the case of existing plans, past service costs can be amortized over a period of 40 years. In the case of new plans, past service costs are to be amortized over a 30-year period.

Many pension plans already existing, or new ones started, very appropriately should give credit for the years their older employees have already worked. A reasonable period of years for covering the costs for these past service cases is desirable and I believe the bill has taken care of that in a proper manner.

The conferees agreed on a plan for termination insurance. This is intended to protect an employee who works many years and might lose his pension because the plan failed by reason of the company going out of business or from other causes. It will be administered by a corporation. The chairman of the corporation will be the Secretary of Labor and the Secretaries of Commerce and the Treasury will serve on the Board.

The rates of premium for the plan termination for the first year of operation is $1 per head for single-employer plans and 50 cents per head for multiple-employer plans.

After the first year, the premium may be fixed by continuing with the per capita premium just mentioned or a premium based upon the unfunded vested accrued benefits. This premium is one-tenth of 1 percent for the single-employer plans and one-fourth of that amount for the multiple-employer plans. A portion of the premium may be based on the vested accrued benefits—whether or not funded—at a percentage which is necessary to raise the same amount of money as the portion of the premium based upon the unfunded vested accrued benefits. In later years, the corporation may work out a combination of these premium plans.

This new legislation provides certain fiduciary standards in reference to private pensions. The "prudent man" rule is written into Federal law for this purpose. There is also a requirement for diversification of assets. A pension fund cannot have more than 10 percent of its investment in the stock of the employer. Profit-sharing plans are not subject to this particular rule.

The fiduciary standards also set forth certain prohibited transactions between the fund and a party in interest. These prohibited transactions are:

First, sales or exchanges or leasing of property;

Second, loans or credit;

Third, furnishing of goods, services, or facilities;

Fourth, the transfer of plan assets; and

Fifth, a limitation on the purchase of the employer's securities or real property.

There were groups that favored portability of pension plans. This could not be worked out. There are no direct portability provisions in the legislation agreed upon by the conferees. The law does provide that if any employee leaves employment, and has a vested interest and an accrued benefit, that he may have his benefit transferred to an individual retirement account or, with the consent of his new employer, have it transferred to the new employer.

This legislation places a limitation in the amount of retirement benefits an individual may receive from a qualified pension plan. The limitation is the lesser of $75,000, or 100 percent of the participant's average compensation for his highest 3 years.

In the profit-sharing plans, there is an annual contribution limitation. This is the lesser of $25,000, or 25 percent of the participant's

compensation. Personally, I cannot quite see the logic for a limitation in reference to the profit-sharing plan, but my view did not prevail.

All in all I believe that the conference report represents good legislation. The staffs have worked hard and diligently. They have dealt with a very complex subject and they have been crowded for time, but they have done their part and have made a real contribution for the public good.

Mr. President, I yield the floor.

Mr. TAFT. Mr. President, there is one question which has arisen as a result of the remarks that were made in the debate on the bill by the distinguished Congressman from Pennsylvania, Mr. Dent appearing on page H8701 of the Record.

I understand the managers of the bill have clarified the matter somewhat.

To clarify the remarks made by Congressman Dent, I would like to ask the distinguished Senator from New York, who is such a leader in this legislation, while there is preemption under section 514 of the substance of the pension legislation including the matter of provisions relating to attorneys services under employee benefit plans does this section 514 of the act seek to preempt State bar associations from adopting ethical rules or guidelines generally and/or from disciplining its members?

Some question arises in regard to that because of the remarks made indicating that the preemption doctrine extended to rules of professional organizations.

Mr. JAVITS. Will the Senator yield?

My answer to that is no. Section 514 of the act does not preempt State bar associations from adopting and enforcing ethical rules or guidelines generally and/or from disciplining its members or acting to discipline members of the bar, which bar associations often do.

Section 514 does preempt State law with respect to any employee benefit pan described in section 4(a) and not exempted in section 4(b).

Since the plans subject to Federal supervision would include plans providing prepaid legal services, it is intended that State regulation—but not bar association ethical rules, guidelines or disciplinary actions—in regard to such plans be preempted. But the State, directly or indirectly through the bar, is preempted from regulating the form and content of a legal service plan, for example, open versus closed panels, in the guise of disciplinary or ethical rules or proceedings.

Mr. TAFT. I thank the distinguished Senator from New York for his remarks.

Before yielding the floor, I just want to express my appreciation for the tremendous amount of work that has gone through the various committees that dealt with this problem and, as I say, I think they have come up with an excellent bill.

As a member of the Labor Committee earlier in the game, I held field hearings in the State of Ohio, and the inequities and misunderstandings that were involved in the private pension system were legion, and I am glad they have been cleared up.

Mr. JAVITS. I would just like the Senator from New Jersey (Mr. Williams) to confirm my interpretation.

Does the Senator from New Jersey confirm his agreement with my view?

Mr. WILLIAMS. Basically, I do. It, perhaps, could have more amplification as such rules might affect the substance or operation of prepaid legal service plans. Certainly the substance or operation of such plans is preempted and will not be disturbed by what this colloquy is raising; am I right on that?

Mr. JAVITS. That is right.

Mr. WILLIAMS. Right now.

This is an area that will not give to bar associations the authority to undo what we, in Congress, have permitted to be done, that is, giving employers and unions the freedom to develop and operate legal service plans of their choice.

Mr. JAVITS. But that they have their normal disciplinary functions.

Mr. WILLIAMS. Otherwise.

Mr. JAVITS. That is correct.

Mr. BENTSEN. I wish to pay particular tribute now to the chairman of the Labor Committee, the distinguished Senator from New Jersey (Mr. Williams) for the time, devotion, and effort he has put into this, and the ranking minority member of that committee, Senator Javits of New York, who has long dedicated his efforts in that regard, for the contributions they have made; and also, the chairman of the Committee on Finance, Senator Long of Louisiana, and the chairman of the Subcommittee on Private Pensions, Senator Nelson.

Mr. JAVITS. Mr. President, will the Senator yield so that I can ask for the yeas and nays on the conference report?

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BENTSEN. Mr. President, I am proud to have been one of the chief Senate sponsors as well as one of the Senate conferees for the landmark pension reform bill which will protect countless American workers from the loss of their hard-earned pension benefits after this new law goes into effect. Final congressional approval of this historic legislation for the American worker will represent one of the most significant achievements of the 93d Congress.

This new law will insure that upon retirement, sufficient funds are available to provide workers with their earned pension benefits. It will guarantee peace of mind for countless American workers.

It will prevent tragic abuses in the future. Take, for example, the case of a Wichita Falls, Tex., woman who recently retired at the age of 65 after 17 years of service with the same employer. She was earning a pension during these years and she confidently approached retirement age expecting to receive her hard-earned pension benefits upon retirement. However, due to a technicality in this woman's pension plan she lost her entire pension—every single cent of it. Because she had missed 2 years of service due to family illness during her employment, this worker lost her entire pension. Countless economic tragedies such as this will be prevented in the future by this new pension legislation.

Mr. President, this legislation is long overdue. As one worker wrote to me in May:

> How many more people must face a bleak and poverty striken future before our elected representatives agree on much needed and overdue legislation to protect pension rights.

Over the past several decades tens of millions of American working men and women have confidently approached their retirement age expecting to receive a sizable monthly pension.

The expectations of most of these workers have been fulfilled. Generally, America's private retirement system has performed very well for the millions of retired Americans presently receiving their expected retirement benefits.

But, unfortunately, there are thousands of other workers who have not received pension benefits that they have earned. Their dreams of financial security after retirement have been shattered. Promises have been broken. So far as they are concerned, America's private retirement system has failed.

The pension legislation that Congress is sending to the President will eliminate the inequities and aberrations in our private retirement system. At the same time this legislation recognizes the importance of expanding private retirement coverage to the tens of millions of American workers who do not now have the opportunity to participate in private retirement plans.

The purpose of this legislation is not to establish an ideal pension plan but rather to set up minimum standards to prevent real abuses. A pension plan can always be more generous than the minimum standards legislated by Congress. Hopefully, companies and unions would establish plans that, in fact, are more generous than the minimum standards.

However, it is important to recognize that if minimum standards are set too high, we would discourage the creation of new plans. It is estimated that today only about one-half of America's work force is covered by private retirement plans. This means that more than 20 million American workers will never receive a private retirement benefit to supplement social security and personal savings.

Certainly Congress cannot disregard these 20 million workers when it formulates pension legislation. Many of these individuals need more than social security benefits and personal savings to retire with financial security.

Let us examine some of the inequities in our private retirement system which will be prevented in the future by this bill.

One of the fundamental problems involves the loss of pensions by workers who leave their jobs after long periods of employment but before their earned pensions become vested because of unreasonable vesting requirements. Vesting occurs when an employee receives a nonforfeitable right to the money contributed to a pension plan on his behalf. Vesting may occur after an employee works for a company a specified number of years or after an employee reaches a certain age and number of years of service. Different pension plans contain different vesting formulas but once an employee's pension rights are vested, the employee is entitled to receive his benefits at the normal retirement age even if he leaves the company before that time. Wherever an employee goes, he retains an absolute right to any vested benefits he may have earned.

Unfortunately, the system does not always work. There are too many examples in which employees, with many years of service with a company, have been denied absolutely all of their earned pension because

they separated from their jobs just prior to fulfilling unreasonably stringent vesting requirements. They are left without a retirement income which they had confidently anticipated receiving, and on which they are dependent for decent survival.

For example, consider the case of Stephen Duane who worked at a New Jersey warehouse for 32 years during which time he was accumulating a pension. The warehouse was closed down in 1970 and Stephen Duane lost his job. He was 51 years old at the time, just 4 years short of his company's minimum pension age. As a result he lost all of his pension rights. Despite 32 years of service, during which time he was earning a pension, Stephen Duane received absolutely nothing.

The experience of Thomas Litchko, a father of five, is equally tragic. Mr. Litchko had been employed by the same Pennsylvania corporation for 20 years, during which time he was earning a pension. In the spring of 1972—when Mr. Litchko was 39 years old—his company closed down and he was informed that he had no vested rights, that he was not entitled to any pension whatsoever. Under the provisions of his pension plan, an employee had to reach the age of 40 before he would receive any vested rights. Thomas Litchko was only 1 year short of vesting and consequently lost 20 years' worth of accumulated pensions.

Another example of unreasonable vesting requirements involves the participants of a union-administered pension plan in Chicago. Each local within this union administers its own pension plan. Under the terms of these plans a worker must remain within the same local for 20 years in order to acquire any vested rights. Sometimes a slight shift in jobs—perhaps from the loading docks to the weighing station—involves a shift in union locals and a complete loss of all pension rights for an employee with less than 20 years on the first job.

These are only a few examples of the way countless numbers of American working men and women have been tragically victimized by unreasonable vesting provisions in their pension plans.

Such tragic losses of pension benefits will be prevented in the future when this pension legislation goes into effect. Under this bill, the employer or union running the plan has the option of meeting one of three minimum vesting formulas. Under one formula, a worker would become 100 percent vested after 10 years. Under a second graded formula, a worker would be 25 percent vested after 5 years and vesting would increase by 5 percent a year for the next five years and by 10 percent a year for the following five years to provide 100 percent vesting after 15 years. The third alternative guarantees the worker 50 percent vesting whenever his age and service total 45 years or he has worked a minimum of 10 years and in either case, he is to reach 100 percent vesting after another five years.

Furthermore, when this legislation goes into effect, the worker must be allowed to join the plan at age 25, or after a year of service, whichever is later. If he enters at age 25, he can get up to 3 years of back credit toward vesting for years worked in that firm prior to age 25.

These formulas would have guaranteed the pension benefits of Stephen Duane and Thomas Litchko and countless other American workers.

However, a minimum vesting standard by itself will most certainly

not provide a complete solution to the problems of the private retirement system. We are aware of many tragic examples in which employees have been denied pension benefits—benefits that had actually vested—simply because the pension plan's assets were insufficient to meet all of its obligations.

This poses two related but very important problems—funding and termination insurance.

There is a clear need to legislate minimum funding standards so that pension plans are accumulating sufficient assets to meet their obligations. It is also essential for all pension plans to acquire termination insurance to guarantee payment of vested benefits in the event that a plan happens to terminate with insufficient assets to meet its obligations. This bill sets minimum funding standards and establishes a termination insurance program.

There have been countless examples of pension plan failures that demonstrate this need. A classic example involves the closing of the Studebaker plant in South Bend, Ind., in 1964 and the accompanying termination of its pension plan. Even though this was a liberal plan which called for the systematic funding of liabilities, there were not enough assets available to pay all claims when the plan terminated. After the assets were distributed, 4,000 vested employees between the ages of 40 and 60 had received only 15 percent of their anticipated benefits. In fact, some 2,900 employees under the age of 40, some of whom were vested, were left with absolutely nothing.

Unfortunately, this is far from an isolated example.

Government statistics indicate that during 1972 alone more than 15,000 pension plans participants lost retirement benefits because their pension plan terminated with insufficient assets to meet all plan obligations. These losses amounted to more than $40 million in anticipated retirement incomes. Several thousand of these victims of pension plan terminations actually lost their entire earned pension, every single cent of it. For these individuals, the collapse of their retirement plan resulted in the loss of 100 percent of their hard-earned pension.

On the basis of this study, we can anticipate that over a 10-year period more than 150,000 American working men and women would see promised pension benefits vanish without this legislation.

We must not forget that the termination of a retirement plan is much more than a statistic compiled for Government charts. It is much more than a list of numbers or a series of percentages. As the victims of pension plan terminations can easily attest, a termination represents a great personal tragedy.

It was certainly a real tragedy for the retired worker in Minnesota who learned that he might lose his vested pension because his former employer was about to discontinue the retirement plan. This retired worker said:

> If I get a cut in my pension, I don't know what I will do. My wife has been mentally ill for 14 years and had 45 shock treatments and I am doctoring for cancer since 1954. So you can see my health and my wife's are not too good. Her medicine for a year runs over $500 not including mine, so we need all the pension fund we can get.

The experience of Olaf Anderson of Philadelphia provides another illustration. After working for the same company for 48 years, Mr.

Anderson retired in 1970 and began to receive a pension of $100 a month. However, the company pension plan was terminated in 1971, and Mr. Anderson now receives no pension at all. It is interesting to note that this company provided its employees with a booklet describing the pension. The booklet informed the employees:

> You can look forward to retirement with peace of mind knowing that under the plan there will be a pension check in the mail to you from the company every month for life.

In light of such occurrences, it is not difficult to understand why so many Americans look at the private retirement system as a series of broken promises.

These examples clearly illustrate that minimum vesting standards alone provide no protection to employees when a plan terminates with insufficient assets to cover all liabilities.

Further protection is absolutely necessary. This legislation establishes minimum funding standards so that all employers will make sufficient contributions to back up all vested benefits over a reasonable period of time. In addition, this bill establishes a program of pension insurance—modeled after the Federal Deposit Insurance Corporation for banks—which will insure that after this law goes into effect all employees will be protected in the event that their plan does terminate before becoming fully funded.

The concept of termination insurance is certainly nothing new. In fact, it is well established and has proven to be very effective in protecting millions of Americans from substantial economic losses due to such financial mishaps as the failure of a bank or a savings and loan association or the financial difficulties of a brokerage house.

We have long had the protection of the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation. A few years ago Congress added a new system of termination insurance with the creation of the Securities Investor Protection Corporation.

The Federal Deposit Insurance Corporation, which was created under the Banking Act of 1933 to protect depositors against bank failures, has worked very effectively for 40 years. A depositor is presently insured up to $20,000 in each insured bank. Depositors do not pay for deposit insurance. Rather, each bank pays for the cost of the insurance through semiannual assessments equal to a fraction of 1 percent of the bank's volume of deposits.

Similarly, the Federal Savings and Loan Insurance Corporation was created by the National Housing Act of 1934 to insure savings accounts in insured savings and loan associations. Each savings institution bears the cost of the insurance by premiums paid to the FSLIC. The basic insured amount for each saver is $20,000.

The Securities Investor Protection Corporation—SIPC—was established 3 years ago to guarantee stock market investors against losses stemming from financial difficulties of brokerage houses. SIPC is not a Government agency. It is a nonprofit membership corporation whose members include all broker-dealers registered with the Securities and Exchange Commission and all members of securities exchanges. The securities industry is responsible for financing SIPC through assess-

ments by SIPC on its member firms. SIPC members are assessed a percentage of their gross revenues from the securities business.

The existence of the FDIC and the FSLIC for close to 40 years and the recent creation of SIPC provide substantial precedent for a program of pension plan termination insurance and demonstrate its feasibility.

The funding standards in this legislation and the termination insurance program will insure that upon retirement, funds will be available to provide earned benefits. It will guarantee peace of mind for millions of American workers.

Any comprehensive program to prevent abuses in our private retirement system must also focus on the area of fiduciary responsibility. The assets in private pension plans exceed far more than $100 billion. It is essential that those who handle these vast sums of money discharge their duties solely in the interests of the plan participants and their beneficiaries.

Workers' pension funds deserve strong fiduciary protections to insure that their interests are not subordinated to the self-enriching intrigues of "insiders" to the plan.

This bill will establish judicially enforceable standards to insure honest, faithful, and competent management of pension and welfare funds.

There have been some notable examples of abuse resulting from conflicts of interest in the handling of pension plan assets. These abuses have been brought to the attention of Congress as the result of congressional investigations, Labor Department investigations, and court litigation.

Let us examine some of these abuses.

For example, in 1960, the pension plan of a large retail store in Washington, D.C., purchased the real estate used for the retail store for $625,000. In 1968, the plan sold the real estate back to the store for $625,000. The plan and its participants did not realize any appreciation in the value of this real estate while held by the plan. Eight months after the store repurchased this real estate from the plan, it sold the property for $2,385,000.

Another example occurred in 1968 when the President of the X company took over the Y publishing company in Philadelphia. He directed that $6 million of Y's pension plan be invested in the Y publishing company even though Y had lost $62 million since 1961. The union sued the President and the two other officials of Y, charging they had "misappropriated, fraudulently converted and dissipated" $6 million from the pension fund. The President got the Board of Directors of Y to pass a resolution saying that the Y plant in Philadelphia would be closed unless the union dropped its suit and allowed the company to withdraw another $4 million from the pension fund. In effect, the President of Y company said: "It will be put up or shut up. What do you want, the suit or jobs?"

A much discussed example of conflicting interests involving a union official and employee benefit plan participants, was exposed by the Senate Permanent Subcommittee on Investigations in 1965. This investigation precipitated much of the original congressional interest

in Federal legislation imposing fiduciary standards on pension and welfare funds.

According to the subcommittee's report:

> George Barasch's domination of the two unions and of their employee benefit plans gave him effective control of approximately $15,500,000 that rightfully belonged to the members of the unions. This sum of money was held in the assets of the several corporations he formed and capitalized with the funds of the employee benefit plans and in the assets of the existing trust funds of the unions. He managed to achieve this position of power because in every fund established and maintained by the unions since they were organized, he served irrevocably either as lifetime sole trustee or as a lifetime union co-trustee.

Additionally, with loans from the funds, this union official established a management firm to administer these funds. He also created several foreign corporations, including "research foundations" in foreign countries into which various funds were channeled, with total diversions of almost $5 million.

For his efforts, the union official was well remunerated, including an annual salary of $35,000 from the management firm, $407,000 in life insurance coverage and total retirement benefits of $54,098 per year for life—the pension benefit alone was valued by the committee at $796,925.

Under pressure from the Senate subcommittee and Federal and State agencies, he returned $4.2 million to the employee benefit funds, resigned as trustee of the funds, and subjected these funds to the supervision of the New York State Insurance Department. However, he was never prosecuted for any violation of law since State and Federal officials apparently concluded that no existing laws were violated.

The provisions of this bill will protect workers from these kinds of fiduciary abuses.

Unless a variance is granted by the Secretaries of Labor and Treasury, a pension plan administrator would generally be prohibited from engaging in the following transactions under the new law:

The sale, exchange, or leasing of property between the plan and a party-in-interest.

The lending of money or extension of credit between the plan and a party-in-interest.

The furnishing of goods, services, or facilities between the plan and a party-in-interest.

The transfer of assets for the benefit of a party-in-interest.

The deposit or investment of plan assets outside of the United States.

This comprehensive bill also addresses itself to the question of reporting and disclosure. Under this legislation, pension plans will be required to disclose more detailed information to plan participants and the Federal Government. This will facilitate Government discovery of illegal uses of pension plan assets. In addition, it will provide participants with a much better understanding of how their plans operate. It is especially important that communications to employees be presented in a manner that an average participant can easily understand. It is clearly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, or if these conditions were stated in a misleading or incomprehensible manner in plan documents.

Furthermore, this bill specifically makes it unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate

against a pension plan participant or beneficiary for the purpose of interfering with any rights guaranteed under the bill. A participant or beneficiary may bring a civil action against any person who interferes with his rights which are protected under the act.

These minimum standards of vesting, funding, termination insurance, fiduciary responsibility, reporting, and disclosure will greatly strengthen our private retirement system by eliminating the small number of abuses. The legislation achieves a fair balance between the need to provide adequate protection to existing pension plan participants and the important need to expand pension coverage. The legislation does this by setting minimum standards—not ideal standards—which would not impose such severe costs on employers so as to discourage the creation of new plans or actually force the termination of some existing plans. At the same time this bill would protect countless American workers from pension abuses.

These minimum standards provide fair treatment to all parties—employees, employers and unions. The Federal Government has a longstanding policy of encouraging retirement plans by means of our Federal tax laws. It is only fair that this policy be implemented equitably so that employees will be the beneficiaries of this policy to the same extent as the individuals who establish the plans.

While this legislation is essential to safeguard the pension rights of those Americans who currently participate in private retirement plans, this legislation does not neglect the tens of millions of workers who do not now have the opportunity to participate in any retirement plan. It is discriminatory to provide special tax benefits for participants of private retirement plans while totally denying any tax benefits to those who presently do not participate.

It is estimated that more than 20 million American workers do not now participate in any retirement plan. Many of these individuals need more than their personal savings and Social Security checks to enjoy their retirement years with financial security.

This legislation will help expand pension coverage by creating a new incentive for personal savings which will be known as an IRA or individual retirement account, and also by increasing allowable contributions to self-employed or Keogh plans.

Under the individual retirement account, an individual who does not participate in another pension plan is allowed to receive an annual tax deduction of up to $1,500 for contributions to one of these personal retirement plans. These contributions can be invested in a number of ways such as a bank, savings and loan association or credit union. These entities will actually hold the contributions, and investment earnings will be free of tax until distributed to the individual after retirement.

The new law will also increase the allowable contributions to self-employed or Keogh plans from the present level of $2,500 a year to $7,500.

Both of these provisions—the creation of individual retirement accounts and the liberalization of retirement plans for the self-employed—will encourage the expansion of our private retirement system.

This new individual retirement account will provide employees with increased portability since it will give workers a greater opportunity

to carry pension rights from one retirement plan to another. With the consent of the employer, the new law would enable employees to transfer pension assets on a tax-free basis from qualified plans to an individual retirement account when an employee leaves employment. These funds could remain in the individual retirement account on a tax-free basis until the employee retires, or until he acquires employment with a new employer. With the approval of the new employer, the employee could transfer funds on a tax-free basis from his individual retirement account to a qualified plan of this employer.

Final enactment of this legislation will go a long way toward making our private retirement system perform more effectively. It is historic legislation which will both protect pension plan participants from inequities and expand pension coverage.

Mr. WEICKER. Mr. President, I would just like to take this opportunity to compliment the distinguished Senator from New York (Mr. Javits) for his work on this measure.

This pension reform is not something that has been spur-of-the-moment legislation by the distinguished senior Senator from New York. This is a lifetime work covering an area of great need.

It meaningfully fills a rather large gap in the lives of so many people. So many individuals have been hurt over the years because of our failure to safeguard their life's work, their pensions.

It is only fitting that Senator Javits' work in this area be recognized.

I feel he has accomplished a great thing for the entire Nation in sticking to this problem and arriving at the solution we now have before us and which hopefully will become the law of the land.

Mr. JAVITS. Would the Senator yield just so that I can thank him very much for his warm sentiments, which are very meaningful to me, and for which I am very grateful?

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, today the Senate is passing, and sending to the President for his signature, legislation with the very simple goal that workers have a right to the pensions they have been promised. This rather basic reform of our pension laws has taken so long to achieve, despite the hard work and dedication of many, because economic injustice seems to be harder to perceive than other forms of injustice.

When a man is denied his civil rights or his right to privacy, that abuse is clear and its correction depends merely on the will to right the wrong. But when a man spends a lifetime of work and then does not receive the pension he had every reason to expect, who is to blame? Is it the employer who did not provide more than the law requires? Is it the worker who did not understand the gaps in the law? I think not. Ultimately, the responsibility and blame lies with Congress.

Congress had a pretty good idea when it decided to encourage, through use of the tax code, the development of retirement income plans. A tax approach has particular advantages that can be matched, if at all, only by a massive and extremely costly Federal program—

such as social security—financed by Federal taxes. Unfortunately, Congress did not write into the law sufficient safeguards to insure that it achieved its purpose of providing retirement income for a significant number of low-wage workers.

For example, during the hearings I conducted last year, we heard about Mr. Robert Pratt of Hudson, N.Y., who in 1971 was laid off by his employer, the Gifford-Wood Co. Mr. Pratt had worked 47 years for this company, and was to retire within 1 year at the age of 65.

In June 1972, Gifford-Wood was sold to another firm, and its pension plan was terminated—3 months before Mr. Pratt's 65th birthday. When he applied for retirement benefits, Mr. Pratt was told he would receive nothing for 47 years of service.

A widely publicized failure of the private pension system occurred in 1964, when Studebaker closed its plant in South Bend, Ind., 4,500 employees lost 85 percent of their earned pension benefits. This was an economic catastrophe to the individuals involved, and to the entire community of South Bend.

For some workers, the shock of losing both their jobs and their pensions within a few years of retirement drove them to suicide.

These are but two of the hundreds of tragic losses of pensions by hard-working Americans, extensively documented in lengthy congressional hearings over a period of years. These hearings demonstrated that existing law fails to assure American workers that their pension benefits are secure and will be available when promised and due.

Congress has necessarily concentrated on the problems and inadequacies of the private pension system, but it fully acknowledges and recognizes the substantial achievements of the system.

If these tragic cases were the full story, then the logical legislative remedy would be simple—abandon the private pension system, close it out, and save $4 billion of Federal revenue. The full story is that private pensions are making a substantial and growing contribution in providing retirement income and security for millions of Americans.

In 1970 about 30 million workers were covered by a pension plan as compared to only 4,000,000 in 1940. By 1980, pension plans are expected to cover 42,000,000 employees. In 1970, 4.7 million beneficiaries received $7.4 billion in pension payments. Clearly, private pensions, along with social security are providing a solution to a uniquely 20th century problem. In the last century, the average American's life expectancy was 47 years; today, it is 70 years of age. Despite these substantial achievements, it is clear that many pension plans failed to achieve their full potential as a source for retirement income.

At a cost of $4 billion of Federal revenue and at a cost of increased taxes for American taxpayers, it is not unreasonable for Congress to establish minimum standards to insure that pension plans achieve the desired objective of providing retirement income for a growing number of American workers.

This legislation put into the law minimum safeguards—safeguards that should have been in the law in the first place—to make the system work and to justify its present cost to the American taxpayers. The bill is designed to protect workers against loss of pension rights when

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they switch jobs or when their pension fund is inadequately funded or abruptly terminated by the employer.

Briefly, this legislation proposed seven major pension reforms:

First, it sets conditions under which an employee must acquire a nonforfeitable right to a pension.

Second, it requires the funding to be adequate to pay for the promised pension.

Third, it establishes a program of termination insurance to protect the pensions of workers.

Fourth, it applies the traditional standards of conduct by individuals in a fiduciary capacity to those responsible for administering pension funds.

Fifth, it increases the amount of contributions that the self-employed can set aside for their, and their employees, retirement.

Sixth, it establishes a new tax deduction for retirement savings for individuals not covered by pension plans.

And, seventh, it allows an employee, with the agreement of the employer, to take his vested pension rights with him when he leaves his job and put them in an individual savings account or the pension plan of his employer.

In all its deliberations and decisions, Congress was acutely aware that under our voluntary pension system the cost of financing pension plans is an important factor in determining whether a pension plan will be adopted. Unduly large increases in cost can impede the progress of the private pension system. For this reason, in the case of those requirements which add to the cost of financing pension plans, Congress tried to adopt provisions which strike a balance between providing a meaningful protection for the employees and keeping costs within reasonable limits for employers.

AGE AND SERVICE REQUIREMENTS

Overly restrictive age and service eligibility can defeat, as much as inadequate vesting, the purpose of pension plans. To extend coverage of pension plans, this bill provides generally that employees cannot be required to work for more than 1 year or to the age of 25, whichever occurs later, to participate in a pension plan. There will be a 3-year lookback provision so that a person who starts employment at age 22 will be granted 3-year credit for the purpose of vesting if he still is working for the same firm when he becomes 25.

VESTING

Unless an employee's right to his accrued benefits are nonforfeitable, in other words, vested, he has no assurance that he will ultimately receive a pension. Under present law, pension rights, accumulating slowly over many years, may be lost in a day.

Besides the personal hardship for the individuals involved, this is highly inequitable, since pension contributions are usually made in place of additional compensation or other benefits the workers would have received.

Most pension plans recognize the importance of providing a nonforfeitable right after a reasonable period of service. However, about

one-fifth of all plans still do not provide any vesting until retirement. Administration figures reveal that only 42 percent of participants 50–60 years of age were entitled to a vested benefit, and only 46 percent of these over 60 had vested benefits. For these reasons, the legislation concluded that a minimum vesting standard must be required for all pension plans.

The legislation establishes three minimum vesting standards, one of which every pension plan must meet. The three minimum vesting standards are:

First, provide an employee with a 25 percent vested interest in a plan after 5 years of service, increasing by 5 percent in each of the next 5 years and then by 10 percent in each of the next 5 years until 100 percent vesting is reached after 15 years of membership;

Second, 100 percent vesting at the end of 10 years service; and

Third, 50 percent vesting when age and years of service equal 45, increasing by 10 percent in each of the following 5 years with the requirement, however, as a safeguard for workers who join a plan at a young age, that after 10 years of service he must be at least 50 percent vested.

Most service accumulated prior to enactment of the bill will count toward vesting.

FUNDING

Obviously, the promise of a pension plan is only as secure as its method of funding will allow. The continuing stream of benefit payments to an increasing number of retirees must come from reserves built up during the employees' working life.

Many private plans are well funded. Their employers contribute annually according to a carefully calculated long-term funding program based on accepted actuarial methods. Typically, the employer contribution includes the current cost of paying for the future benefits being earned during the year concerned together with an actuarily determined portion of any liabilities that have been previously accumulated and not already paid. However, for some plans, employers try to support the pension fund at a lower level, making only limited contributions. A survey made by the Senate Labor Subcommittee revealed about one-third of the plans studied had a ratio of assets to liabilities of 50 percent or less, while 7 percent of the plans' ratio was 25 percent or less.

Under current law the required annual contributions can be quite minimal. The only requirement is that annual contributions cover current costs together with the interest on any unfunded liabilities. There is no requirement that contributions be sufficient to fully amortize unfunded liabilities over any period of time.

To insure adequate funding, the bill provides that annual contributions must be sufficient not only to cover current service costs but also to fully amortize all unfunded liabilities in level payments over a 30-year period for single-employer plans and 40 years for multiemployer plans.

The level payment method for funding adopted by the bill is analogous to the payment of a home mortgage in that each specified payment includes a payment for both interest and principal. This method spreads the payments evenly over the payment period, making it generally easier for the employer to plan for the payments. Also,

the level premium method, while providing for adequate amortization of past service costs, initially adds only relatively moderate amounts to an employer's existing funding costs.

Provision is also made for funding of experience deficiencies arising when costs are greater than estimated or when the plan's assets were less than anticipated. In establishing a minimum funding standard for such experience deficiencies, Congress tried to avoid two problems. If it allowed the experience deficiencies to be funded over a very long period of time, an incentive would be provided for the use of actuarial assumptions understanding costs since any resulting deficiencies could without penalty be made up over a long period of time.

On the other hand, if the experience deficiencies were required to be amortized over too short a period, employers would encounter economic hardship in meeting the annual payments. This bill seeks to avoid both these problems by allowing experience deficiencies to be funded over a period of 15 years for single-employer plans and 20 years for multiemployer plans.

To prevent economic hardship, any pension fund will have the right to ask for a waiver of the annual payment. A fund will be able to obtain five such waivers within 15 consecutive years.

The bill also provides new and more effective penalties where employers fail to meet the funding standards. In the past, funding standards have been enforced by terminating the plan. This procedure, instead of penalizing those responsible for the underfunding, penalizes the employees covered by the plan. Since the responsibility for underfunding can hardly be charged to the employees, it is most inappropriate to apply a penalty adverse to their interest. For this reason, the bill places the obligation for funding and the penalty for underfunding on the employer.

In general, if an employer fails to contribute sufficient amounts to meet the new funding requirements, he will be subject to a nondeductible 5 percent excise tax on the amount of the underfunding for any year. If the employer fails to make up the underfunding then he is subject to a second level excise tax amounting to 100 percent of the underfunding.

PLAN TERMINATION INSURANCE

The new minimum vesting and funding requirements adopted by this bill will make pension plans more effective in providing retirement income and will increase the benefits paid to retired employees. But these provisions are not sufficient in themselves to provide complete assurance that employees will actually receive their promised benefits. This is because the termination of a pension plan which grants vested rights and which is being funded regularly on what appears to be an adequate funding schedule can result in the loss of substantial benefits by plan participants if the termination occurs before full funding is achieved. This is what happened at Studebaker where the plan seemed to be adequately funded.

The bill, therefore, establishes a plan for insuring employees against the loss of benefits resulting from plan termination. All pension plans providing defined benefits are required to participate in the insurance arrangement.

The program adopted by the bill is designed to insure significant amounts of pension benefits, and yet at the same time to exclude the

payment of excessive benefits. Therefore, the insurance is limited to the vested benefit provided under the plan up to the participant's 5 highest paid years of participation in the plan but in no case will the insured benefit be more than $750 a month.

The termination insurance program is intended to work hand in hand with the minimum funding standards imposed by the bill, since the latter will limit the losses due to plan termination by requiring more adequate funding of pension plans. In addition, the employer is made liable for the losses due to plan termination up to 30 percent of his net worth, no more than 120 days prior to the plan termination date. The program is intended to be self-financing with single-employer plans contributing, in the first year, $1 per participant in the fund and multiemployer plans contributing 50 cents.

FIDUCIARY RESPONSIBILITY

Employees have a right to expect that trustees and administrators will handle their pension funds properly for the purposes for which they are intended and will not neglect their duties in this regard or divert the funds to improper uses. Unfortunately, instances have arisen in which pension funds have been used improperly by plan managers and fiduciaries. This situation should not be permitted to continue and this bill contains measures designed to reduce substantially the potentialities for abuse. The bill establishes fiduciary standards for trustees and other parties in interest of private employee benefit plans.

Fiduciaries are required to discharge their duties solely in the interest of participants and their beneficiaries and in a manner which will not jeopardize the income or assets of the fund. They are also specifically prohibited from engaging in actions where there would be a conflict of interest with the fund, such as representing any other party dealing with the fund.

The bill also completely changes the method of enforcing the prohibited transaction rules governing plans qualified under the tax laws. For violating the prohibited transaction rules the bill imposes an excise tax on the parties in interest who have engaged in the prohibited transaction. This is in contrast to the present situation, where the trust loses its tax exemption upon engaging in a prohibited transaction, thereby imposing a sanction on the employer but also imposing one on the employees as well. In addition, the bill establishes new rules that define the transactions that are prohibited, substantially strengthening these rules.

Currently, transactions are prohibited generally when the dealings involved are on other than an arm's-length basis. However, arm's-length standards require substantial enforcement efforts, resulting in periodic and uncertain effectiveness of these provisions.

PORTABILITY

The rapid development of private pension plans has created a multitude of individual plans, but not an integrated system. As a result, employees frequently acquire vested rights to pensions under a number of different pension plans established by previous employers. In view of the fact that some of the pension rights will generally have

been acquired many years before the employee retires, he may forget to claim all his pension benefits. In addition, in such cases, the plans involved may not be able to locate the employee to pay him his pension benefit.

The bill contains provisions to ameliorate these problems. With employer's consent, a worker, when he leaves his present employer, may withdraw his vested benefits and place them in an individual savings account where it can later be placed in the pension plan of his next employer.

Finally, in order to insure that employees will actually receive the pension benefits to which they are entitled when they retire, the Social Security Administration will keep records regarding the vested rights of employees which will be sent in to the Social Security Administration by employers at the time that employees terminate their employment. The Social Security Administration will then furnish this information regarding vested pension rights to individuals both on request and at the same time that official information is supplied regarding social security benefits.

Another objective of the bill is to provide more rational and equitable tax treatment under pension plans. It does this by:

First. Individual retirement plans. Any individual who is not a participant in a qualified retirement plan will be permitted under the bill to make tax deductible contributions of up to $1,500 a year toward his own retirement plan, or 15 percent of his compensation, whichever is less.

And by:

Second. Increasing deductions for H.R. 10. The bill increases the maximum contribution for self-employed to 15 percent earned income. The maximum contribution allowed would be $7,500 a year.

CONCLUSION

This is not a perfect bill, nor is it all that I hope for, but before we become too disappointed, let us look at where we started. We started with no statutory standards for vesting; no reasonable funding requirements; fiduciary standards so vague and loose that they were an open invitation for abuse; and no Federal program to insure that workers actually received their pensions. Looking back, we can use our high hopes as a guide to future reforms.

Generally, under present law an employee's contributions to a retirement plan maintained by his employer are not tax deductible. However, in the case of salary reduction plans and cash or deferred profit-sharing plans, the Internal Revenue Service has permitted employees to exclude from income amounts contributed by their employers to the plan even where the source of these amounts has been the employee's agreement to take a reduction in his salary or bonus or to forego his salary increases.

In December 1972, the Treasury issued proposed regulations which would have changed this result in the case of salary reduction plans and would call into question the treatment under cash or deferred profit-sharing plans.

To allow time for congressional study of these plans, the conference report provides for a temporary freeze of the status quo before the

proposed regulations issued in December 1972. Thus, contributions to plans in existence on June 27, 1974, are to be governed under the law as it was applied before January 1, 1972.

Generally, a plan would be treated as having been established on June 27, 1974, if the plan was reduced to writing and had been adopted and approved by the directors of the employer corporation by that date even if contributions had not yet been made to the plan on a salary reduction basis. New participants, of course, may be added to an existing plan in the normal course of business.

Where employees of a company are already covered by an existing plan, its extension to additional groups of employees of the same company or its subsidiaries generally would not be considered to be an addition of new participants in the normal course of business, since this frequently will have the same effect as establishing a new plan. However, if the number of employees covered by the extension is minimal in relation to the number of employees covered on June 27, 1974, then the extension may be regarded as being in the normal course of business.

Mr. President, I ask unanimous consent to insert in the Record an excellent summary that appeared in the August 26 issue of U.S. News & World Report.

There being no objection, the summary was ordered to be printed in the Record, as follows:

[From U.S. News and World Report, Aug. 26, 1974]

How New Pension Law Will Affect You

(Note.—Pension plans of thousands of companies will be safer—and more generous. Millions of people will find it easier to build their own retirement funds. All this and more emerges from new federal rules about to become law.)

Nearly every employee and self-employed person in the country—most of the 70 million people in private industry—will be affected by a landmark law laying down rules for company pension systems. Final terms of the legislation were approved by House-Senate conferees on July 31, and the measure was expected to become law in August.

Under the Employee Benefit Security Act of 1974—

More people, particularly young people, will be brought under pension plans and start earning retirement credits.

Most workers who change jobs will retain some of their pension rights, instead of losing them all as most do now.

Pension funds will be more adequately financed, and insured to pay off even if companies themselves go broke.

Surviving mates will gain protection when retired workers die. Their benefits will be automatic.

Self-employed business and professional people—and farmers—get dramatic increases in amounts they can set aside tax-free for their retirement.

Employes not covered by a pension plan get to lay aside some income—tax-free—in personal retirement accounts.

For millions of workers, the shift in pension prospects is to be spectacular. For companies, too, the changes are momentous. Most pension plans must be rewritten. And the deadline for major provisions of the law is Jan. 1, 1976.

EARLIER COVERAGE

The day when a new employe had to wait for many years before starting to build pension credits is over now.

Whatever your company plan has required in the way of a waiting period in the past, it will have to conform to this new rule: Any employe who is at least

age 25 and has one year on the company payroll must be taken into the pension plan—assuming the firm has one.

And note this: If you signed on with your company at a tender age, you'll get a running start toward a pension when you reach 25. Under the new law, you must then be given credit for your past service, up to at least three years.

Congress wrote in an exception to that rule to relieve businesses with high employe turnover. It provides that, if a company plan irrevocably commits itself to—or "vests"—all of an employe's credits from the day he signs on—

The new employe's participation in the pension program can be delayed for three years.

But, once he has completed the three years, he must be given full pension credits for those years.

An older worker joining a company cannot be excluded from a pension plan unless he is within five years of the firm's normal retirement age.

Part-time and seasonal workers are protected, too. They must be covered by plans if they work for a firm at least 1,000 hours in a year. That's roughly half time.

Generally, a worker who leaves a company for a year or more and then returns must be credited with his service before the job break, if he works for another year.

What happens if a company is sold, or merged? If the new employer continues the plan, covered employees must receive full credits for service registered with the old employer. If the plan is terminated, employees should gain some protection from other provisions.

BUILDING PENSION CREDITS

Even under the new law, companies are not required to set up retirement plans, or told precisely how benefits are to be computed. Yet, where plans are operating—new or existing ones—employees must be permitted to build, or accumulate, pension credits in some fair and orderly way.

Under the old rules, many pension plans have not had any formal system under which employees accrue specific pension credits each year. In the future, they must have such systems. And, in general, employers will not be permitted to restrict credits unduly in early years and reserve the sizable accumulations for later years.

Specifically, your company must arrange its plan so as to qualify under one of three optional rules:

If your firm elects to operate under rule No. 1, the amount of benefit rights credited to an employee in any one year cannot be more than 1⅓ times the amount to be credited in any other year—excluding allowances for salary differences. That assures a reasonably stable rate of acquiring credits.

Example: A worker coming under a plan at age 30 might be credited with benefit rights at a rate of 2½ per cent a year for 20 years, then 3⅓ per cent a year after that.

In 20 years, he would accumulate 50 per cent of his final pension entitlement. And after 15 more years, at age 65, he would have 100 per cent.

Under rule No. 2, by contrast, a company would simply allot retirement rights at a flat rate of at least 3 per cent a year. Thus, 100 per cent of full-pension credits would be accrued in no more than 33⅓ years of service.

Under that rule, an individual first covered at, say, 30 would become fully "accrued" at age 63⅓, though provisions of his company plan might require him to stay on until 65.

For a company choosing rule No. 3, credited—or accrued—service must be geared to a worker's proportionate time with the company. Suppose a company plan's maximum covered period is 43 years—from age 22 to 65. A worker starting at age 30 and working to 65 would get 34/43 of the maximum service credit toward a pension.

To what extent is the accrual requirement to be retroactive when it takes effect Jan. 1, 1976? By one half.

Example: Your company plan, which has had no formal accrual system in the past, elects to qualify under No. 2, which means accruing at a rate of at least 3 per cent a year. That rule, if it had been operating in the past, would have given you credits for, say, 20 years of service.

Thus, on Jan. 1, 1976, your plan must credit you with accrued benefit rights for at least 10 years of work.

GUARANTEED PENSION RIGHTS

The accumulation of credits over long periods has often meant very little by itself in the past. Millions of workers who have served their employers for many years have gotten little or nothing on reaching retirement time.

That happens when an individual leaves a job before his company pins a "guaranteed retirement age" label on some or all of the credits he has earned and accrued.

Many corporations have sought to bind their employees with "golden handcuffs"—promises of lucrative pensions but only for those who stay on for a very long time.

For example, your company might not have locked up for you—or "vested" in you—any of your accrued credits until you reached, say, age 45. Then your credits might have vested at a rate of perhaps 5 per cent a year.

Under that vesting plan, you sacrificed all of your earned and accrued rights if you quit the firm before you reached age 45 and half of them even if you worked to age 55. Not until 65 would you have become fully vested.

That kind of vesting is barred for the future. Companies are given the option of qualifying under any of three new rules:

If your employer chooses to operate under plan No. 1, the company will not be required to vest any of a new employe's pension credits until he has 10 years of service. But then all of the employe's accrued credits must be made nonforfeitable.

Result: If a worker quits after 9½ years he will lose all of his accumulated pension rights. If he leaves any time after 10 years, he will still be entitled at retirement age to claim all of the pension benefits he has earned and accrued at the time he quits.

Plan No. 2 permits gradual vesting. But these minimum standards must be met: 25 per cent of all accrued credits must be vested in the employe's account after 5 years of service. At least 50 per cent must be made nonforfeitable after 10 years. And all accrued benefit credits must be vested in a worker's account after 15 years.

The third option is known as the "rule of 45." Under it, an employe must be vested with 50 per cent of his benefit rights when his age and years of service add up to 45. Then, his vesting is boosted by 10 percentage points each year. But there are exceptions.

For one, a worker will not meet the rule of 45 until he has had at least 5 years of service. So an employe who signs on at age 40 will wait till age 45—though at 42½ his age and service add to 45.

For another, a young employe cannot be made to work more than 10 years before satisfying the rule of 45. If he joins the firm at age 22, he must become 50 per cent vested at 32.

Note: Under any of the options, an employee must be at least 50 per cent vested after 10 years of service and 100 per cent vested at 15 years—whatever his age.

How retroactive is the new vesting rule? Completely. When it takes effect, Jan. 1, 1976, the new vesting requirements will be applied overnight to all of a worker's accrued benefits.

That vesting, of course, is not for former employees, generally. In fact, a pension plan is permitted to exclude service before 1971 unless the employee earned credits for work in at least three years after 1970. Thus, many people who quit jobs in recent years will find that by returning to their former employers they can pick up permanent rights to pension credits that already have been earned.

And, for millions of other workers, the "golden handcuffs" that have bound so many to their jobs will be stricken off on Jan. 1, 1976.

SHORING UP FINANCES

In the past, even full vesting has not always guaranteed a worker the pension he has earned. Thousands of employes have lost out when companies foundered, merged with other firms, or simply dropped pension plans.

Beginning Jan. 1, 1976, companies with retirement programs are going to have to meet new standards of financing—or "funding."

Formal pension funds will have to be created and administered under trust arrangements or invested through an insurance company. Pension-plan assets will have to be made independent of the future prosperity of the employer.

Companies, moreover, will be required to set up and follow contribution schedules that, in the opinion of competent actuaries, are adequate to finance pension obligations of the plans. Specifically—

Companies will be required to "fund" currently the normal costs of pension rights as they accrue.

Sponsoring firms will be allowed time to catch up with the funding of pension obligations already accumulated. But contributions will have to be made evenly and regularly so as to fund all past-service credits over 30 or 40 years, depending on circumstances.

Funding is to be monitored by actuaries and adjusted every three years to assure soundness of plans. Companies will pay specific tax penalties for lags in funding.

For today's older workers, looking to retirement soon, 30-year funding offers little protection. But there is yet another layer of safeguards in the new law.

INSURANCE FOR PENSIONS

As a final back-up, a new Pension Benefit Guaranty Corporation is to insure all of a worker's vested benefits up to certain limits, effective July 1, 1974.

The guarantee will be for a benefit amount up to 100 per cent of a worker's average pay in his five years of highest earnings, but no more than $750 of monthly pension at the start. That $750 ceiling is to rise with general wage levels.

Companies with pension plans will pay the Guaranty Corporation an annual premium of $1 per employee at the start. Employers in multicompany plans negotiated with unions will pay 50 cents. After an initial period, premiums are to be boosted for companies with inadequate funding. Moreover, companies will remain liable to the insurance corporation for reimbursement of benefit payments up to 30 per cent of an employer's net assets.

And the insuring organization is to have an automatic "draw" of 100 million dollars on the Treasury if it needs further capital to pay pensions.

Question: What good is the insurance of vested benefits to older employes of companies that have provided little or no vesting of pension credits?

Answer: A great deal of good, because the minimum vesting requirements written into the law are to put a floor under insured benefits.

Thus, authors of the legislation say, a worker with 15 years of service in a company can rest assured that, in nearly all cases, his pension is safe.

The idea of full portability of pensions when workers move from one company to another is still under study.

The new pension rules, however, provide some options for workers quitting jobs before retirement time:

The vested-service credits will, at the very least, remain with the original employer and pay off when the individual has reached the firm's normal retirement age—no later than 65.

Or, if the company plan provides for it, the worker can take his vested credits—and funds—with him for incorporation into the pension program of his new employer—assuming his new employer goes along with the idea.

Or, when a company plan permits it, the new law lets the departing worker take his funds—in a tax-free "rollover"—to be invested in an individual retirement account until he retires or joins a new company plan.

OTHER COMPANY-PLAN RULES

Still other standards are written into law to govern the operation of private plans.

Pensions paid by corporation plans cannot exceed 100 per cent of an employe's average pay in his best three years and cannot be more than $75,000 a year. Those limits will be lowered for retirement before age 55.

The limit on profit-sharing contributions is boosted to 25 per cent of salary—from 15 per cent in the past—but a contribution for an individual cannot exceed $25,000.

Employers whose turnover experience suggests a policy of firing workers just before they qualify for pension vesting will be in trouble.

Employes must be given a booklet detailing plans in understandable language, to be updated at least each five years.

Companies must give the Labor Secretary annual reports—including independent audits, actuarial reports and opinions, security transactions and other financial data.

Strict rules are set out to prohibit self-dealing by companies and to require fair play in managing funds.

HARDSHIP SITUATIONS

Financial burdens piled on companies by new pension-plan rules could be staggering, particularly for small firms.

The result could be to push hundreds of employers to terminate plans. To avoid that, the Congress has provided relief in hardship cases. Where the vesting or funding of requirements cannot be met without threatening the existence of a pension plan, or the company itself, there are special steps that can be taken.

Benefit formulas can be amended, made less generous.

Funding schedules can be stretched out.

"Waivers" may be granted for firms unable to comply.

But note: Temporary relief from new standards is to require approval of the Secretary of the Treasury, usually only after a finding that full compliance would jeopardize benefits or employe pay.

SELF-EMPLOYED PEOPLE

Dramatically sweetened tax benefits are made available to millions of self-employed people who set up their own retirement plans.

Under past law, self-employed people have been allowed to put aside—tax free—up to 10 percent of their earnings, but no more than $2,500 a year. Starting this year, 1974, they can set aside up to 15 per cent of earnings, with a top limit of $7,500. For younger, low-earning self-employed, $750 can be put aside tax free, no matter how small earnings are.

Yet the big break is for the affluent. While the top set-aside for most self-employed people is raised to 50 per cent, the maximum is tripled for the well-heeled.

However, a self-employed person will not be permitted to count more than $100,000 of earnings in figuring his set-aside fund. Thus, a self-employed person earning more than $100,000 a year will have to use a set-aside factor of 7½ per cent in order to invest the maximum of $7,500. And, to meet the nondiscrimination rules, he must contribute for his employes 7½ per cent of their pay.

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For the first time, millions of other people are going to be allowed to set up their own tax-free retirement plans.

The new privilege is provided for the 40 million or so private-industry employees who are not covered by any pension plan other than Social Security.

Under the new law, these people will get to create Individual Retirement Accounts—or "IRA's." An eligible employee will be allowed to put as much as 15 percent of his pay into an IRA—up to a top of $1,500 a year—and take a tax deduction for the amount.

That deduction is to be available even for individuals who claim the "standard" deduction, rather than itemizing.

Funds put in IRA's must be invested in one of three ways.

They can be used to buy special annuities that will not begin to pay off until age 59½.

Or they can be invested in a special type of U.S. Treasury bond. It currently pays 6 per cent.

Or the money can be put in a trust to be administered by a bank or other approved institution. Companies themselves can sponsor IRA plans for employes.

Some other points to note about this new privilege:

The annual earnings of the invested funds—as well as the income put aside each year—will be tax-free.

Withdrawals of funds from IRA's—at age 59½ or later—will be fully taxable income, though usually at lower rates than people pay in working years.

For years, savings institutions have pressed a proposal to give people tax deductions on limited amounts of savings. Now, starting in 1976, millions will get just that.

Over the years, the new rules could attract funds to many such institutions—mutual funds, insurance companies, bank trust departments—and thus help ease the shortage of capital that many economists see looming in this country.

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August, 1974. All private pension plans to be set up after the new law is enacted must:

Include all employes aged 25 or older with one year or more of service with the company.

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Begin to pay money into the company pension fund according to a new standard designed to guarantee the program's financial soundness.

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BIG BREAK FOR THE SELF-EMPLOYED

Under the "Keogh bill," self-employed people are permitted to put portions of their income each year, free of taxes, into a fund that can earn tax-free income until it starts paying out at retirement. The new pension law raises the maximum amounts that can be put in yearly—

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Mr. RIBICOFF. Mr. President, I am pleased that we are about to give final approval to the monumental pension reform bill.

The Congress has worked long and hard on this most complex bill. It has been given thorough consideration in both Houses by two committees of each House before going to the floor.

In the Senate it was written by the Senate Finance Committee and the Labor and Public Welfare Committee.

As a member of the Senate Finance Committee and a member of its subcommittee on pensions, I was pleased to be an original cosponsor of the legislation. In late 1972 when the bill was reported by the Labor and Public Welfare Committee and came to the Senate Finance Committee I led the fight in committee to report out a strong bill.

In 1973 I testified before the Labor and Public Welfare Committee on the need for a strengthened bill and while not all of my amendments to shorten the vesting period and assure full portability were

accepted, the final result which we are now voting on is a good first step on the road to assure an adequate and secure pension system.

The private pension system is a growing one. In 1940, 4 million employees were covered by private pension plans with assets of $2.4 billion. Today, more than one-half of our work force in the United States—40 million workers—are members and participants of private pension plans. Assets in these plans, numbering some 34,000, amounted to almost $130 billion in 1970. By 1980 it is expected that 42.3 million workers will participate in plans with assets skyrocketing to over $250 billion.

Despite the growth and development of these plans in the last few years, regulation of them in the public interest has been minimal. Internal Revenue Code regulations exist principally to produce tax revenue and to prevent evasion of tax obligations. The Labor-Management Relations Act regulates pensions only to prevent union officials and employers from conspiring to divert employee funds to their own use. The act is not intended to establish nor does it provide standards of funding adequacy, security of investment, or fiduciary conduct. The 1958 Welfare and Pension Plans Disclosure Act, while purporting to protect the pension participant, essentially required the administrator of a pension plan to file certain very limited information with the Secretary of Labor and furnish information to employees upon request. The act lacks substantive fiduciary standards and relies on the initiative of the individual employee to police the management of his plan.

All too often working men and women contribute to these pension plans only to find when they retire that the benefits they had been promised are denied them.

In addition, frequently the pension funds themselves are abused by those responsible for their management who manipulate them for their own purposes or make poor investments with them.

It is time controls were imposed to safeguard the workers' valuable funds. Genuine pension reform will be achieved only by Federal regulation.

In the absence of comprehensive pension reform legislation, abuses and phantom retirement security benefits have been frequent. The major problems which give rise to pension horror stories are: First, the failure of pension funds to provide necessary minimum and adequate vesting provisions; second, premature termination of pension plans without adequate insurance coverage to protect the employees; third, the failure of pension plans to have sufficient funding to meet accrued and vested liabilities; and, fourth, ineffective fiduciary requirements which threaten the safety and preservation of fund assets.

The report of the 1971 Senate Welfare and Pension Plan Study elaborated on these problems. It revealed that of all those who have worked at and then left jobs with pension plans over the last 20 years, only about 5 percent will ever receive any benefits.

A succession of witnesses coming before the Pension Study Subcommittee—mostly union workers in their late forties and fifties—told of losing their pension rights, because of plant shutdowns, transfers, store closings, and pension fund terminations. One witness, who had worked for 32 years for one company, was laid off 3 years before he

was eligible for his pension. Other workers have lost their pensions when a company has shut down. Perhaps the most famous case involved the Studebaker Division of Studebaker-Packard. More than 4,000 Studebaker workers aged 40 to 60 got only 15 percent of what the company owed them. Other workers lost benefits when their companies moved or when they changed jobs.

Even when the company remains solvent and stable and the worker has a vested right to receive his pension, there is a growing concern over the integrity of the pension fund assets. While most corporate pension funds are carefully managed and conservatively invested, misuse, manipulation, and poor management of pension trust funds are all too frequent. One financially ailing company tried to borrow over a million dollars from a subsidiary's pension pool for use as operating capital. Another company has a policy of investing more than half its pension fund's assets in the company's own common stock and in the real estate of a company subsidiary. And yet another firm routinely dips into its pension funds for cash to make acquisitions.

These manipulations point up the lack of real controls over the investment of pension funds. Present laws and common law trust principles have failed to come to grips with the problem.

While the pension bill is complex, a quick summary of its highlights include:

PARTICIPATION

Plan must allow employee to participate after he attains age 25 or 1 year of service, whichever occurs later. For service prior to age 25, plan must "look back" and credit up to 3 years of service prior to 25.

VESTING

Employee guaranteed a vested right to his earned pension benefit upon retirement after working a reasonable period of years wth employer. Plan must vest employee pension credit according to one of three optional formulas.

First. Graded vesting. Vest 25 percent after 5 years increasing to 100 percent after 15 years of service with employer.

Second. Full vesting. Vest 100 percent after 10 years of service.

Third. Modified Rule of 45. Vest 50 percent when age and service total 45—that is, age 40 with 5 years of service—40 plus 5 equals 50 percent vesting—increasing 10 percent each year thereafter.

VOLUNTARY PORTABILITY

If both employer and employee agree, the vested benefit of employee may be transferred into individual retirement savings account—IRA—established by employee upon change of employment.

FUNDING

Plans must fund liabilities over approximate working lives of participants. All plan liabilities to be funded over 30 to 40 year period.

VARIANCES

Plan could obtain extensions of funding and vesting periods if necessary to avoid "substantial economic hardship" to plan participants.

PLAN TERMINATION INSURANCE

Mandatory participation of private plans in an insurance program. Insurance will guarantee payment of vested benefits if employer is incapable of discharging his funding obligations. All plans must pay a premium of $1 per participant per year for single employer plans, and 50 cents per participant per pension benefits insured up to benefit of $750 per month.

FIDUCIARY STANDARDS

Judicially enforceable prudent man standard of investment for pension and welfare funds and prohibition of "insider" transactions with parties-in-interest to pension fund.

DISCLOSURE

Employee must be furnished with understandable plan booklet explaining all of his rights and obligations under plan. Annual audit required. Also, annual financial statement of pension fund investments involving more than 3 percent of assets.

INDIVIDUAL RETIREMENT ACCOUNTS

Any individual not covered by private or public plan could set up individual savings account and contribute up to $1,500 annually. Contributions are tax deductible and all earnings on IRA account tax-free. IRA's could be invested in bank savings account, mutual funds, special government bonds.

H.R. 10 PLANS

Plans for self-employed individuals could deduct up to $7,500 annually for pension contributions. Such plans must also cover employees of self-employed individual.

LIMITATION

Tax deduction for employer contribution to pension plans limited to amount which would produce annual pension of $75,000 for any one employee.

ENFORCEMENT

Enforcement of standards to be provided by Department of Labor and the Internal Revenue Service. Generally, the IRS will enforce the tax qualification requirements of the Internal Revenue Code and the Labor Department will enforce violations of standards which result in denial of employee pension rights.

PRIVATE ACTION

Employee may enforce his rights under the act in Federal courts. Also, the plan must provide a claims procedure with an opportunity for a full and fair review of any denial of claim.

I ask unanimous consent that the U.S. News & World Report article describing the pension reform bill be inserted at this point in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the U.S. News & World Report, Aug. 26, 1974]

HOW NEW PENSION LAW WILL AFFECT YOU

(NOTE.—Pension plans of thousands of companies will be safer—and more generous. Millions of people will find it easier to build their own retirement funds. All this and more emerges from new federal rules about to become law.)

Nearly every employe and self-employed person in the country—most of the 70 million people in private industry—will be affected by a landmark law laying down rules for company pension systems. Final terms of the legislation were approved by House-Senate conferees on July 31, and the measure was expected to become law in August.

Under the Employe Benefit Security Act of 1974—

More people, particularly young people, will be brought under pension plans and start earning retirement credits.

Most workers who change jobs will retain some of their pension rights, instead of losing them all as most do now.

Pension funds will be more adequately financed, and insured to pay off even if companies themselves go broke.

Surviving mates will gain protection when retired workers die. Their benefits will be automatic.

Self-employed business and professional people—and farmers—get dramatic increases in amounts they can set aside tax-free for their retirement.

Employees not covered by a pension plan get to lay aside some income—tax free—in personal retirement accounts.

For millions of workers, the shift in pension prospects is to be spectacular. For companies, too, the changes are momentous. Most pension plans must be rewritten. And the deadline for major provisions of the law is Jan. 1, 1976.

EARLIER COVERAGE

The day when a new employee had to wait for many years before starting to build pension credits is over now.

Whatever your company plan has required in the way of a waiting period in the past, it will have to conform to this new rule: Any employe who is at least age 25 and has one year on the company payroll must be taken into the pension plan—assuming the firm has one.

And note this: If you signed on with your company at a tender age, you'll get a running start toward a pension when you reach 25. Under the new law, you must then be given credit for your past service, up to at least three years.

Congress wrote in an exception to that rule to relieve businesses with high employe turnover. It provides that, if a company plan irrevocably commits itself to—or "vests"—all of an employe's credits from the day he signs on—

The new employe's participation in the pension program can be delayed for three years.

But, once he has completed the three years, he must be given full pension credits for those years.

An older worker joining a company cannot be excluded from a pension plan unless he is within five years of the firm's normal retirement age.

Part-time and seasonal workers are protected, too. They must be covered by plans if they work for a firm at least 1,000 hours in a year. That's roughly half time.

Generally, a worker who leaves a company for a year or more and then returns

must be credited with his service before the job break, if he works for another year.

What happens if a company is sold, or merged? If the new employer continues the plan, covered employes must receive full credits for service registered with the old employer. If the plan is terminated, employes should gain some protection from other provisions.

BUILDING PENSION CREDITS

Even under the new law, companies are not required to set up retirement plans, or told precisely how benefits are to be computed, existing ones—employes must be permitted to build, or accumulate, pension credits in some fair and orderly way.

Under the old rules, many pension plans have not had any formal system under which employes accrue specific pension credits each year. In the future, they must have such systems. And, in general, employers will not be permitted to restrict credits unduly in early years and reserve the sizable accumulations for later years.

Specifically, your company must arrange its plan so as to qualify under one of three optional rules:

If your firm elects to operate under rule No. 1, the amount of benefit rights credited to an employe in any one year cannot be more than 1⅓ times the amount to be credited in any other year—excluding allowances for salary differences. That assures a reasonably stable rate of requiring credits.

Example: A worker coming under a plan at age 30 might be credited with benefit rights at a rate of 2½ per cent a year for 20 years, then 3⅓ per cent a year after that.

In 20 years, he would accumulate 50 percent of his final pension entitlement. And after 15 more years, at age 65, he would have 100 per cent.

Under rule No. 2, by contrast, a company would simply allot retirement rights at a flat rate of at least 3 per cent a year. Thus, 100 per cent of full pension credits would be accrued in no more than 33⅓ years of service.

Under that rule, an individual first covered at, say, 30 would become fully "accrued" at age 63⅓, though provisions of his company plan might require him to stay on until 65.

For a company choosing rule 3, credited—or accrued—service must be geared to a worker's proportionate time with the company. Suppose a company plan's maximum covered period is 43 years—from age 22 to 65. A worker starting at age 30 and working to 65 would get 35/43 of the maximum service credit toward a pension.

To what extent is the accrual requirement to be retroactive when it takes effect Jan. 1, 1976? By one half.

Example: Your company plan, which has had no formal accrual system in the past, elects to qualify under rule No. 2, which means accruing at a rate of at least 3 per cent a year. That rule, if it had been operating in the past, would have given you credits for, say, 20 years of service.

Thus, on Jan. 1, 1976, your plan must credit you with accrued benefit rights for at least 10 years of work.

GUARANTEED PENSION RIGHTS

The accumulation of credits over long periods has often meant very little by itself in the past. Millions of workers who have served their employers for many years have gotten little or nothing on reaching retirement time.

That happens when an individual leaves a job before his company pins a "guaranteed at retirement age" label on some or all of the credits he has earned and accrued.

Many corporations have sought to bind their employes with "golden handcuffs"—promises of lucrative pensions but only for those who stay on for a very long time.

For example, your company might not have locked up for you—or "vested" in you—any of your accrued credits until you reached, say, age 45. Then your credits might have vested at a rate of perhaps 5 per cent a year.

Under that vested plan, you sacrificed all of your earned and accrued rights if you quit the firm before you reached age 45 and half of them even if you worked to age 55. Not until 65 would you have become fully vested.

That kind of vesting is barred for the future. Companies are given the option of qualifying under any of three new rules:

If your employer chooses to operate under plan No. 1, the company will not be required to vest any of a new employe's pension credits until he has 10 years of service. But then all of the employe's accrued credits must be made nonforfeitable.

Result: If a worker quits after 9½ years he will lose all of his accumulated pension rights. If he leaves any time after 10 years he will still be entitled at retirement age to claim all of the pension benefits he has earned and accrued at the time he quits.

Plan No. 2 permits gradual vesting. But these minimum standards must be met: 25 per cent of all accrued credits must be vested in the employe's account after 5 years of service. At least 50 per cent must be made nonforfeitable after 10 years. And all accrued benefit credits must be vested in a worker's account after 15 years.

The third option is known as the "rule of 45." Under it, an employe must be vested with 50 per cent of his benefit rights when his age and years of service add up to 45. Then, his vesting is boosted by 10 percentage points each year. But there are exceptions.

For one, a worker will not meet the rule of 45 until he has had at least 5 years of service. So an employee who signs on at age 40 will wait till age 45—though at 42½ his age and service add to 45.

For another, a young employee cannot be made to work more than 10 years before satisfying the rule of 45. If he joins the firm at age 22, he must become 50 per cent vested at 32.

Note: Under any of the options, an employe must be at least 50 per cent vested after 10 years of service and 100 per cent vested at 15 years—whatever his age.

How retroactive is the new vesting rule? Completely. When it takes effect, Jan. 1, 1976, the new vesting requirements will be applied overnight to all of a worker's accrued benefits.

That vesting, of course, is not for former employes, generally. In fact, a pension plan is permitted to exclude service before 1971 unless the employe earned credits for work in at least three years after 1970. Thus, many people who quit jobs in recent years will find that by returning to their former employers they can pick up permanent rights to pension credits that already have been earned.

And, for millions of other workers, the "golden handcuffs" that have bound so many to their jobs will be stricken off on Jan. 1, 1976.

SHORING UP FINANCES

In the past, even full vesting has not always guaranteed a worker the pension he has earned. Thousands of employes have lost out when companies foundered, merged with other firms, or simply dropped pension plans.

Beginning Jan. 1, 1976, companies with retirement programs are going to have to meet new standards of financing—or "funding."

Formal pension funds will have to be created and administered under trust arrangements or invested through an insurance company. Pension-plan assets will have to be made independent of the future prosperity of the employer.

Companies, moreover, will be required to set up and follow contribution schedules that, in the opinion of competent actuaries, are adequate to finance pension obligations of the plans. Specifically—

Companies will be required to "fund" currently the normal costs of pension rights as they accrue.

Sponsoring firms will be allowed time to catch up with the funding of pension obligations already accumulated. But contributions will have to be made evenly and regularly so as to fund all past-service credits over 30 or 40 years, depending on circumstances.

Funding is to be monitored by actuaries and adjusted every three years to assure soundness of plans. Companies will pay specific tax penalties for lags in funding.

For today's older workers, looking to retirement soon, 30-year funding offers little protection. But there is yet another layer of safeguards in the new law.

INSURANCE FOR PENSIONS

As a final back-up, a new Pension Benefit Guaranty Corporation is to insure all of a worker's vested benefits up to certain limits, effective July 1, 1974.

The guarantee will be for a benefit amount up to 100 per cent of a worker's average pay in his five years of highest earnings, but no more than $750 of monthly pension at the start. That $750 ceiling is to rise with general wage levels.

Companies with pension plans will pay the Guaranty Corporation on annual premium of $1 per employe at the start. Employers in multicompany plans negotiated with unions will pay 50 cents. After an initial period, premiums are to be boosted for companies with inadequate funding. Moreover, companies will remain liable to the insurance corporation for reimbursement of benefit payments up to 30 per cent of an employer's net assets.

And the insuring organization is to have an automatic "draw" of 100 million dollars on the Treasury if it needs further capital to pay pensions.

Question: What good is the insurance of vested benefits to older employes of companies that have provided little or no vesting of pension credits?

Answer: A great deal of good, because the minimum vesting requirements written into the law are to put a floor under insured benefits.

Thus, authors of the legislation say, a worker with 15 years of service in a company can rest assured that, in nearly all cases, his pension is safe.

The idea of full portability of pensions when workers move from one company to another is still under study.

The new pension rules, however, provide some options for workers quitting jobs before retirement time:

The vested-service credits will, at the very least, remain with the original employer and pay off when the individual has reached the firm's normal retirement age—no later than 65.

Or, if the company plan provides for it, the worker can take his vested credits—and funds—with him for incorporation into the pension program of his new employer—assuming his new employer goes along with the idea.

Or, when a company plan permits it, the new law lets the departing worker take his funds—in a tax-free "rollover"—to be invested in an individual retirement account until he retires or joins a new company plan.

OTHER COMPANY-PLAN RULES

Still other standards are written into law to govern the operation of private plans.

Pensions paid by corporation plans cannot exceed 100 per cent of an employee's average pay in his best three years and cannot be more than $75,000 a year. Those limits will be lowered for retirement before age 55.

The limit on profit-sharing contributions is boosted to 25 per cent of salary—from 15 per cent in the past—but a contribution for an individual cannot exceed $25,000.

Employers whose turnover experience suggests a policy of firing workers just before they qualify for pension vesting will be in trouble.

Employers must be given a booklet detailing plans in understandable language, to be updated at least each five years.

Companies must give the Labor Secretary annual reports—including independent audits, actuarial reports and opinions, security transactions and other financial data.

Strict rules are set out to prohibit self-dealing by companies and to require fair play in managing funds.

HARDSHIP SITUATIONS

Financial burdens piled on companies by new pension-plan rules could be staggering, particularly for small firms.

The result could be to push hundreds of employers to terminate plans. To avoid that, the Congress has provided relief in hardship cases. Where the vesting or funding of requirements cannot be met without threatening the existence of a pension plan, or the company itself, there are special steps that can be taken.

Benefit formulas can be amended, made less generous.

Funding schedules can be stretched out.

"Waivers" may be granted for firms unable to comply.

But note: Temporary relief from new standards is to require approval of the Secretary of the Treasury, usually only after a finding that full compliance would jeopardize benefits or employe pay.

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Mr. PACKWOOD. Mr. President, the Senate will today take the final step in considering the conference report on private pension legislation, legislation which I have supported through work in two Senate committees over the past 4 years. In giving our final approval to the eminently workable and, hopefully, effective and equitable bill before us, we are signalling a new era for the working men and women of this Nation. For the more than 30 million American working people currently covered under some form of pension plan, we are providing new guarantees that the funds set aside for their retirement—from their own and their employer's contributions—will in fact be available for their retirement years. For those in self-employment pension plans we are revising the allowable set-asides to reflect a rising cost of living, and to provide greater incentives for individuals to plan for their retirement. And we are taking the further landmark step of extending equity to those individuals—fully one-half of all working Americans—who are not presently covered by any pension plan at all.

Adoption of this conference report will, therefore, Mr. President, strengthen the security of virtually all Americans, and move us further toward the goal of dignity and security for all retired individuals.

This conference report deals realistically with the dangers associated with collapse of pension plans and loss of pension rights and benefits. By establishing minimum standards we hope to prevent pension plan failures and thereby avoid the consequential calamity suffered by innocent victims.

Specifically, all plans must provide participation for employees who are 25 years of age or have 1 year of service, whichever occurs later.

All plans must meet minimum vesting standards. Three options are set down by the conference report, offering a fair amount of flexibility in achieving 50 percent vesting during a reasonable period of service.

and 100 percent vesting obtainable at an accelerated rate thereafter.

The first option, called graded vesting, provides for 25 percent vesting after 5 years of service with 5 percent per year for the next 5 years. This means 50 percent per year, to full vesting after 15 years.

The second option simply provides for full vesting after 10 years of employment with the company.

The third option is the rule of 45 with modifications. The rule of 45 states that an employee is 50 percent vested when his age plus his years of service equal 45 or more. Thereafter, vesting is increased by 10 percent per year. Modifications of the rule of 45 include: Someone entering employment within 5 years of retirement age can be excluded, thus preventing possible discrimination in hiring older persons; there must be a minimum 5 years' service; and someone with 10 years service is entitled to 50 percent vesting.

Vesting rules become effective upon enactment of new plans, in 1976 for existing plans, and will apply to all accrued benefits and years of service prior to the date of enactment. Exception: a plan is not required to take into account service performed prior to January 1971, unless the employee has at least 3 years of service after December, 1970.

An important aspect of the conference report is the plan for termination insurance which is intended to protect the employee in danger of losing his pension rights and/or benefits because his employer merges with another company or just goes out of business. The insurance program will be administered by a corporation, chaired by the Secretary of Labor with the Secretaries of Commerce and Treasury serving on the Board. Initially, the premium rate for the plan for the first year of operation is $1 per person for single-employer plans and 50 cents per person for multiple-employer plans. In later years, the corporation may work out different combinations to reflect actuarial experience.

Mr. President, private pension plans have blossomed, particularly in the last 25 years, because of the generous tax treatment accorded companies which maintained pensions for their employees. Money that is paid into a retirement fund is tax deductible, and likewise these fund moneys used for investment purposes and subsequent earnings are, again, tax deductible. The funds become taxable only upon retirement when presumably income and therefore tax brackets are lower.

This special treatment has encouraged the proliferaton of pensions, not at the expense of those not covered by pensions but to their ultimate chargin. For if an individual not covered by a pension plan wishes to save money for his or her retirement, he pays taxes on every cent that he earns and every penny he manages to save. Obviously, the incentive to save is nil because the earnings on savings—even those which may be earmarked for retirement—are taxed at the regular rates.

For instance, an individual not under the benefit of a pension plan might be able to earn $50 for saving, but right away that $50 is reduced to $40.50 because the worker is in the 19 percent tax bracket. Nonetheless, if this individual persevered, earning $50 per month at 5 percent interest, and kept it up from age 35 for 30 years until he or she was 65, the individual would accumulate $27,498, amounting to an estimated life annuity at age 65 of $221 a month.

Now, if another individual earns $50 to be saved, and has the benefit of tax laws for pension plans, the $50 is not taxable and so the full

amount goes into his retirement fund. The earnings from his $50-a-month saving likewise are tax free. This person with the generous tax treatment would, over the same 30-year period accumulate $39,864, or enough to pay an estimated lifetime annuity at age 65 of $319.

Thus, the difference in our two individuals, similar in every respect except one is under a company pension, is the accumulation of more than $12,000, and translating into almost $100 a month more for life! Needless to say, that is a difference most Americans can appreciate, just as far too many have had the unfortunate opportunity to experience this inequity.

The pension bill before us corrects this unfair situation by amending the tax laws to provide that all individuals who are not covered by organized pension plans shall have the same tax treatment as if they were. This new provision stipulates that any person not covered by a regular pension plan may place money from earned income into a fund for his or her own retirement, and take it as a tax deduction.

The limit on the amount of tax deductible contributions is 15 percent of earned income to a maximum of $1,500 per year. This means if a person who does not have the benefit of an organized pension plan can save some money in amounts subject to these limits, he can subtract those savings from his gross income before paying taxes. Additionally, the income on his savings will not be deductible. The law provides for a wide variety of plans that an individual can use, such as a special government savings bond, insurance carriers, or an approved arrangement with a bank or trust company, and is effective in 1975.

Needed reform of the Keogh plan for self-employed individuals is also implemented by provisions of the conference report. At the present time, the maximum that can be placed into a Keogh plan and receive tax benefits is 10 percent of earned income, not to exceed $2,500. The conference report raises this to 15 percent and the maximum to $7,500 per year, effective in 1974.

Mr. President, undoubtedly, this bill is complicated and difficult to understand for it attempts to solve problems that were never less than perplexing, and thus we cannot expect their solution to be simple. But by the very involved nature of the bill and of this conference report we seek to unravel, by fair and necessarily detailed means, the knot of problems surrounding pensions. We seek to end the depressing complications of pension failure and the discriminating tax policy against those not covered by company pensions. I believe this conference report succeeds in that task; our job plainly is to adopt this measure and send it to the White House to become law of the land.

Mr. Roth. Mr. President, the legislation before us today represents a major achievement in insuring pension benefits for millions of American workers. After 3 years of work, this legislation will provide protection for the hard-earned pensions which employees have come to depend on as inflation makes personal savings for retirement progressively more difficult.

This legislation was necessary, because of the many cases where a worker has been deprived of retirement benefits because his company folded, the worker changed jobs, or the pension plan was inadequately financed.

This legislation will increase the number of employees participating in pension plans, insure that those who do participate will actually

receive their benefits, and make the tax laws relating to pension plans fairer for all concerned.

As a member of the Senate Finance Subcommittee on Private Pensions, I have reviewed an enormous amount of material relevant to the need for pension reform. One of the most glaring faults with our old pension law was that an employee could lose his pension benefits if he left or lost his job before retirement. Every year loyal workers are summarily dismissed from their jobs just before they are to become vested participants.

This legislation will require pension plans to grant employees minimum vested rights after serving a minimum number of years. A pension plan will be required to choose one of three alternative vesting requirements: 100 percent of the benefits after 10 years; 50 percent of the benefits when a combination of age and years of service reach 45, with an additional 10 percent added for every additional 5 years; or 25 percent of the benefits after 5 years, increasing to 100 percent after 15 years.

These vesting requirements will insure that workers receive the benefits they are counting on for retirement.

The pension legislation will also insure that pension plans are adequately financed and provide safeguards against plan termination.

The bill establishes minimum safeguards to insure that there will be enough money to pay the guaranteed rights of retiring employees.

This legislation will also provide retirement opportunities to the many employed people who do not have the benefit of an established pension plan. The one provision that I am particularly pleased with, since I was an early supporter, would permit workers not covered by pensions to set aside up to $1,500 per year, tax free, from their earnings.

I have always felt that our tax laws discriminated against workers not covered by pension plans. This is because persons belonging to pension plans can defer taxes on their contributions to the plans, while workers not covered do not receive this tax break for their savings.

This new proposal will correct that inequity and allow persons not covered by pension plans to receive a tax break for their retirement savings. The provision will promote savings and enable more people to provide for their own old age without depending solely on Government programs.

The pension reform legislation before us today is one of the major pieces of legislation to be enacted in this Congress. This legislation, long overdue, will finally insure for millions of American workers the financial security of their retirement plans.

Mr. CLARK. Mr. President, today the Senate is giving final congressional consideration to the private pension reform conference report. This legislation is the product of years of work by the Senate and House of Representatives and four of their major committees—the Senate Finance Committee, the Senate Labor and Public Welfare Committee, the House Ways and Means Committee, and the House Education and Labor Committee. Millions of working men and women all across the country have anxiously awaited passage of this landmark legislation because it represents the first major step toward insuring that those people enrolled in private pension plans get the pension security that they deserve.

In the past, many employees have been denied their pension benefits after years of investment in a private plan, and this legislation is de-

signed to prevent that from happening. Its passage will mean that over 30 million individuals enrolled in over 300,000 private pension plans will be guaranteed income security in their later years. The need for this legislation has been well documented, and I am proud to be associated with it.

Since the beginning of the 93d Congress, I have talked with hundreds of concerned Iowans—working people, small businessmen, management, and labor—and they have unanimously urged the passage of private pension reform legislation. It is not difficult to understand why. This legislation establishes reporting and disclosure requirements to let the participants in a private pension fund know the status of their investments.

This legislation establishes minimum funding requirements to insure that pension plans do not go bankrupt leaving workers without a source of income that they expect and deserve, and it sets fiduciary standards to insure that pension funds are not mismanaged. This legislation also establishes termination insurance to give workers an added guarantee that, in the case that their pension fund does collapse, their benefits will not be lost.

This legislation establishes national standards for vesting to grant employees a nonforfeitable right to their own pension contributions, and it specifically mandates coverage for employees of a firm that has a private pension plan. Furthermore, under the conference agreement, enforcement of these provisions is clearly spelled out so that disputes which do arise may be settled efficiently and expeditiously.

I am disappointed that this legislation does not include mandatory portability features, but I am confident that the next Congress will be able to meet this issue with an appropriate legislative initiative. All too often, workers change jobs and transfer into different pension plans only to find out that their past investment cannot always move with them. This legislation does call for a limited form of portability, but it is my firm conviction that much more needs to be done in this area.

This legislation removes a longstanding inequity by granting individuals who do not qualify for a private pension plan a limited tax deduction—$1,500 or 16 percent of earned income, whichever is less, to provide for their retirement income. Finally, this conference report reduces the discrimination against self-employed individuals under H.R. 10—Keogh plans by increasing the maximum deductible income that may be put away for pension purposes from 10 percent of earned income up to $2,500 per year, to 15 percent of earned income up to $7,500 a year. This will put self-employed individuals on a par with corporate employees.

Mr. President, this is not a perfect bill, but on balance, it is a significant accomplishment. As a result of it, working men and women across this land will realize greater protection for their pension benefits, and those who are not covered under a qualified plan will have the opportunity to establish meaningful benefits on their own. Given all the positive aspects of this bill, the conference agreement deserves our support.

Mr. SCHWEIKER. Mr. President, I would like to take this opportunity to express my strong support for H.R. 2, the comprehensive pension reform legislation which we consider today.

I believe this bill will ultimately be considered to be one of the most significant pieces of social legislation to pass the Congress since the

1930's. As my colleagues know, the House approved this measure yesterday, by an overwhelming vote of 407 to 2, and I am confident that the Senate vote will be equally decisive.

Thus, in retrospect, passage of this bill will almost look easy. But it has been a long, hard road to get here. Back in 1972, when I chaired Labor Committee hearings in Philadelphia on pension reform, we had a long list of witnesses, who had worked for a wide variety of employers—and yet in every case, the retirement dream turned into a nightmare, due to merger, bankruptcy, or just plain fraud. And no matter how outrageous the abuse, we were forced to tell these people there was simply no Federal law to help them. And in all candor, some of the special interest groups have exerted strenuous efforts to see that there never would be a Federal law to protect pension rights.

By the Senate's action today, we are finally going to change all of that. We are finally enacting a law which will supply minimum standards in the crucial areas of vesting and funding, and we are creating mandatory Federal insurance to guarantee that the money is there when retirement date comes. We are also taking significant first steps in the area of portability and with respect to individual retirement accounts.

So we have come a long way, and I think this legislation is a tribute to the members of the four committees of Congress which have participated in its drafting. The legislative process has worked; there have been dozens, in fact hundreds, of compromises, and while the final bill is not precisely the legislation which any of us favored, it is nevertheless good legislation which should be supported by all of us. Moreover, I would like to commend the professional staff which had an unusually heavy responsibility in connection with this legislation.

Finally, I want to emphasize that this legislation is not the end of the road. It is not retroactive for any substantial group of retirees. It does not require any employer to have a pension plan at all. And it does not provide any mechanism to protect pension income from the devastating effects of inflation. I believe all of these areas deserve the serious attention of the Congress in the future, and I would urge my colleagues not to forget pension reform, simply because we are passing this bill today.

Mr. Beall. Mr. President, as one of the early advocates and cosponsors of pension reform, I rise to strongly support H.R. 2, the Employee Retirement Income Security Act of 1974.

This legislation, in my judgment, is for most Americans the single most important bill this Congress will enact. It is probably the most important legislation regarding retirement security since the enactment of the social security legislation.

It is legislation that is long overdue. Its purpose is relatively simple although its provisions are numerous and complex. The bill seeks to protect the retirement benefits of the more than 36 million Americans who are covered by private pension plans and to encourage Americans not presently covered to provide for their own retirement through the granting of tax incentives.

Private pension plans have grown until the total resources of pension plans is now estimated to be in excess of $150 billion. This amount is growing over $10 billion annually. Many of the private pension plans have and are serving American workers well, but in countless cases

which have been documented by congressional hearings and investigations and in letters from constituents, some pension plans have miserably failed the intended beneficiaries.

We have documented cases where the lifetime labor and the hopes of American workers have been dashed because workers have been denied pensions because they changed jobs, were furloughed, the company for whom they worked was sold or went bankrupt, or for technicalities unknown to the employee. Also, there has existed a tremendous inequity in our tax laws which failed to grant incentives to individuals, not self-employed, whose employer did not have a pension plan, to enable them to establish their own program to achieve financial security in their retirement years. This bill then seeks to assure employees the pension that they rightfully expect and which they have earned, a simple matter of fairness and equity.

This legislation, which will encourage adequate private pension programs that will deliver benefits to the workers, hopefully will enable future retirees not only to achieve economic survival, but a degree of an economic comfort and security unknown to other generations of Americans.

H.R. 2 will help address the problems in the pension area by—

First, establishing vesting standards to guarantee a worker a portion of his pension benefits. Under the bill, any employee who is at least 25 years of age would be enrolled in an employer pension plan if one existed;

The pension plan would have the option of using one of three vesting standard options. One of these options, the so-called rule of 45 is of concern to many of us in the Senate, because we were uneasy with respect to its impact on older workers. Many believe that this provision will serve to discourage the hiring of older workers. Committees of Congress must be vigilent in the monitoring of this option to make certain that this does not occur;

Second, providing for minimum funding standards to assure that each pension fund has funds sufficient to pay out anticipated benefits;

Third, creating a Pension Benefit Guarantee Corporation to guarantee payments of benefits in the event of the termination of, such as company bankruptcy, of a pension plan;

Fourth, mandating tighter fiduciary or trustee standards to protect against mismanagement or misuse of pension funds;

Fifth, providing for disclosure of the features and operations of pension funds;

Sixth, increasing the tax incentives for the self-employed pension plans from the present lesser of 10 percent or $2,500 of salary to 15 percent or $7,500; and

Seventh, allowing for the first time individuals who do not belong to a pension plan to establish an individual retirement account for their own retirement. Such individuals will receive a tax deduction for these purposes equal to 20 percent of earned income or $1,500, whichever is lesser.

This legislation while not solving all the problems in the pension area, represents a giant step forward. Although the present bill does not, nor was it intended to, deal with the runaway inflation problem, I could not allow legislation dealing with pensions to pass without

pointing out the harsh and tragic impact that inflation has on all of our citizens, but particularly on retired citizens.

The pension reform legislation will assure that retirees receive their earned benefits. We must now make certain that these benefits are not eroded by inflation and that they will be worth something. We can do this by taking action to reduce and stop inflation, the No. 1 enemy of all of our citizens and this country.

Mr. BUCKLEY. Mr. President, I am pleased to join my colleagues in supporting this very important legislation. It has certainly long been needed. Nearly one-half of our working citizens are still unable to participate in private pension plans receiving favorable tax treatment. This unequal tax treatment will finally be removed by the Pension Reform Act, H.R. 2. Its provisions will change the tax laws to provide that all individuals not covered by an organized pension plan will receive the same tax treatment as those who are, and will therefore be able to set aside nontaxable funds to provide for their retired years.

In addition, the establishment of the Pension Benefit Guaranty Corporation and minimum standards to govern the nearly $185 billion in private pension funds will help insure that workers will not be denied the retirement income toward which they have contributed for many years because of corrupt or inept management, or the closing of a business. Thus, this bill is vitally important to the retirement security and well-being of millions of Americans.

There are other important aspects of this bill. It will, for example, help reduce the fires of inflation by promoting savings. But more importantly, it will slow, and perhaps help to reverse, the trend toward dependence on Government programs and checks; it will encourage individuals to take their own initiative to plan and save for their retirement years, rather than to passively and irresponsibility sit back and expect Government—and the taxpayer—to take full care of them in their old age.

Mr. President, while it contains some unfortunate provisions which may later be corrected, this is a good bill, one deserving of our strong support. I commend the distinguished chairmen of the Labor and Public Welfare and Finance Committees, my senior colleague, the members of the committees, and their staffs, for their extensive and fruitful work on this legislation.

SENATOR RANDOLPH PRAISES PENSION BILL, URGES CONFERENCE REPORT ADOPTION

Mr. RANDOLPH. Mr. President, the conference report pending in the Senate on H.R. 2, the "Pension Reform Act," is one of the finest legislative efforts we have seen during my years in the Congress.

H.R. 2 is a substantial work of great complexity. It is the product of four congressional committees working in harmony, and several years of dedicated effort on the part of several Senators and staff. Conferences among the Senate Committees on Labor and Public Welfare, and Finance, on the one hand, and the House Committees on Education and Labor, and Ways and Means, on the other, stretched over a period of some 18 weeks.

The measure before the Senate provides a sound foundation—a realistic promise for the retirement income security of America's work-

ing people. It provides many new and detailed safeguards for participants in private pension plans which will help to assure that the promise of a pension—which today is only a promise for many thousands of working men and women—will be fulfilled.

Mr. President, Senators Williams, Javits, and Long have explained with thoroughness the major provisions of H.R. 2. I only add, although the measure does not go far enough for some, particularly in the area of portability, I am deeply gratified—and I believe that America's work force will be gratified—that this comprehensive bill includes laudable improvements in minimum standards for participation, vesting, funding, fiduciary requirements, registration, and plan termination insurance.

More than 3 years ago, on May 17, 1971, I said in the Senate that there was a desperate need for pension plan reform. In that statement I quoted from 1968 testimony by Assistant Secretary of Labor Thomas R. Donahue. I think it is appropriate to share with my colleagues a brief quotation from Mr. Donahue:

> In all too many cases the pension promise shrinks to this: If you remain in good health and stay with the same company until you are 65 years old, and if the company is still in business, and if your department has not been abolished, and if you haven't been laid off for too long a period, and if there is enough money in the fund, and if that money has been prudently managed, you will get a pension.

Mr. President, it is my hope and expectation that the days of such uncertainty are numbered, and that millions of retiring working people will be able to look toward their golden years with assurance and security.

As a member of the committee of conference on H.R. 2, I am gratified with its accomplishments. As ranking majority member of the Senate Committee on Labor and Public Welfare, I am grateful for the foresight, intelligence, and leadership demonstrated over the last several years in the matter of pension reform by the able chairman, Harrison A. Williams, Jr. The Senate can likewise be grateful for the intensive effort of the ranking minority member, Jacob Javits.

Staff work on this difficult legislation has been dedicated and persevering. I particularly commend, from the Committee on Labor and Public Welfare, the efforts of Mario Noto, Robert Nagle, Michael Schoenenberger, and Michael Gordon. Each conferee on H.R. 2 is grateful for the competence of Dr. Laurence Woodworth, staff director of the Joint Committee on Internal Revenue Taxation, who led us through the tangle and complexity of this massive measure.

Mr. President, I urge the adoption of the conference report on H.R. 2, and further urge the President, on its adoption, to sign this truly landmark legislation into law.

The PRESIDING OFFICER. The hour of 1:45 having arrived, and the yeas and nays having been ordered on the conference report, the clerk will call the roll.

The clerk will call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. Gravel), the Senator from Indiana (Mr. Hartke), the Senator from Louisiana (Mr. Johnston), the Senator from Wyoming (Mr. McGee), and the Senator from New Mexico (Mr. Montoya) are necessarily absent.

I further announce that the Senator from Maine (Mr. Hathaway),

and the Senator from Hawaii (Mr. Inouye) are absent on official business.

I further announce that, if present and voting, the Senator from Maine (Mr. Hathaway), and the Senator from Hawaii (Mr. Inouye) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. Aiken), the Senator from Tennessee (Mr. Baker), the Senator from Utah (Mr. Bennett), the Senator from New Jersey (Mr. Case), the Senator from Kentucky (Mr. Cook), the Senator from Arizona (Mr. Goldwater), and the Senator from Florida (Mr. Gurney) are necessarily absent.

I also announce that the Senator from Illinois (Mr. Percy) is absent on official business.

I further announce that, if present and voting, the Senator from New Jersey (Mr. Case), the Senator from Kentucky (Mr. Cook), and the Senator from Arizona (Mr. Goldwater) would each vote "yea."

The result was announced—yeas 85, nays 0, as follows:

[No. 378 Leg.]

YEAS—85

Abourezk
Allen
Bartlett
Bayh
Beall
Bellmon
Bentsen
Bible
Biden
Brock
Brooke
Buckley
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Chiles
Church
Clark
Cotton
Cranston
Curtis
Dole
Domenici
Dominick
Eagleton
Eastland
Ervin
Fannin
Fong
Fulbright
Griffin
Hansen
Hart
Haskell
Hatfield
Helms
Hollings
Hruska
Huddleston
Hughes
Humphrey
Jackson
Javits
Kennedy
Long
Magnuson
Mansfield
Mathias
McClellan
McClure
McGovern
McIntyre
Metcalf
Metzenbaum
Mondale
Moss
Muskie
Nelson
Nunn
Packwood
Pastore
Pearson
Pell
Proxmire
Randolph
Ribicoff
Roth
Schweiker
Scott, Hugh
Scott, William L.
Sparkman
Stafford
Stennis
Stevens
Stevenson
Symington
Taft
Talmadge
Thurmond
Tower
Tunney
Weicker
Williams
Young

NAYS—0

NOT VOTING—15

Aiken
Baker
Bennett
Case
Cook
Goldwater
Gravel
Gurney
Hartke
Hathaway
Inouye
Johnston
McGee
Montoya
Percy

So the conference report was agreed to.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. GRIFFIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, the Senate's agreement today to the conference report on H.R. 2 is indeed an historic event. Following the House action of 2 days ago, our decision will mean that this long-overdue reform measure will very soon become public law—as the President has already expressed his unqualified approval.

ECONOMIC BILL OF RIGHTS

I do not feel that it is an overstatement to characterize this legislation as an "economic bill of rights." For it has been 15 years now since we have taken any action in the pension field, and during that time thousands of American workers have lost countless dollars through termination of their pension plan benefits.

Now, however, through vesting, limited "portability," and related concepts, nearly 35 million workers—many of them in the State of Kansas—will be guaranteed actual receipt of the benefits which they earn. The nearly $4,000 average loss suffered by the approximately two out of three "covered" employees who have really had no guaranteed entitlement will be a deplorable situation of the past.

NEW PROVISIONS

Besides liberalizing the self-employed or so-called Keogh plans, the employee Retirement Income Security Act will make it possible for the one-half of our working population who do not have the benefit of a pension plan to set up their own individual retirement plans—and receive the same tax benefits as the others.

Instead of the present 10 percent, or maximum $2,500 annual set-aside subject to tax deductions under a Keogh plan, this new pension law will allow 15 percent of earned income to be deducted—up to $7,500 a year. Moreover, the self-employed will now have essentially the same tax incentives for retirement savings as are reflected in most corporate pension plans.

BASIS FOR TAX TREATMENT

The basic motivation for offering or having private or company pensions lies in our tax law. That is, money which is paid into a retirement fund is tax free, and can be further invested without taxation to generate interest dividends, capital gains and the like.

For a person not covered by a regular pension plan, the tax free limitation on contributions will be $1,500 a year or 15 percent of his earned income, whichever is lesser. He can subtract that amount from his gross income before paying taxes, and can utilize a wide variety of plans—including a special Government savings bond, insurance contracts, or an approved arrangement with a bank or trust company.

COMPANY PLANS, PORTABILITY, TERMINATION INSURANCE

The portion of H.R. 2 dealing with company plans is primarily regulatory in nature, setting minimum national standards. The principal such rule for participation is that the employee be 25 years old or have 1 year of service, whichever occurs later.

Another minimum has to do with vesting, which is patterned after a series of options such as 25 percent after 5 years, 50 percent after 10 years, or 50 percent when age and years of service total 45. In addition, there is a plan for termination insurance, so that an employee who works for many years, but would stand to lose his pension by a company's going out of business, would be protected through a separate corporation administered by the Government.

Finally, although no direct portability provisions could be worked out in this bill, an employee who has a vested interest and an accrued benefit can, with the consent of his new employer, have that benefit transferred to his next job. He may, alternatively, have it transferred to an individual retirement account as well.

BENEFIT TO EVERYONE

Mr. President, this new law is one which I have steadfastly supported and which should be hailed as a benefit to everyone—employees, employers, and the self-employed, such as farmers, alike. It will promote both tax equality and thrift, and will enable persons to provide for their own old age so that they will be less dependent on Government programs.

Sylvia Porter, in a series of articles which appeared recently in the Washington Star-News and other newspapers across the country, provided an excellent overview of the major provisions and long-range impact of the 1974 pension reform legislation. For the benefit of my constituents, Mr. President, I ask unanimous consent that these commentaries be printed in the Record following my remarks.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Washington Star-News, Aug. 5, 1974]

YOUR MONEY'S WORTH: PENSION REFORM AT LAST—1

(By Sylvia Porter)

Within a matter of days, the historic 1974 pension reform bill will become law. After years of debate, seemingly endless complications and disheartening delays, the legislation finally has been hammered out. It may be signed by President Nixon, with all the appropriate flourishes, as early as mid-August, but surely no later than Labor Day.

The number of workers estimated to be directly affected ranges up to 35 million. And the many more millions of us who are not direct beneficiaries also will be indirectly touched.

The two most important provisions are:

VESTING

This is a new guarantee that you actually will get the pension benefits you have been promised and which you have earned by working a given number of years for an employer. Under the law, employers will have these three choices to offer you:

Full vesting (giving the employee all of his earned pension benefits) after 10

years on the job; 25 percent vesting after five years of service, increasing yearly to 100 percent after 15 years; 50 percent vesting as soon as the sum of your age and your years of service reaches 45, with 10 percent additional vesting for each of the following five years.

The vesting provision will become effective immediately for new pension plans started after the law is enacted. Existing plans must comply by Jan. 1, 1976, although some may comply voluntarily before that date.

Job-changing in our country is so prevalent that only a fraction of those covered by plans could in the past expect to collect earned pension credits if they changed jobs before, say, 10 or 15 years of service for a given employer. Millions, in fact, changed jobs so frequently that pension benefits never became vested and they never got a penny.

Under this new law, the span of time a worker must wait before being assured of receiving pension rights may well be shortened from, say, 20 years of service to 10 or 15, or for the first time, benefits will be legally guaranteed (vested).

PORTABILITY

This key provision regulates—although it does not guarantee—the terms under which you may take vested pension benefits from employer to employer when changing jobs.

Under the '74 law, you may have to take your accumulated vested pension benefits in the form of a lump sum of money—if your employer insists and the benefit is less than $1,750. Or you will be able to translate it into a self-employment individual plan. Or you can just blow it, as you might blow your severance pay. Or, if your previous employer agrees, you will have the alternative of leaving the responsibility of managing this slice of your pension to your previous employer.

Criticism already is crescendoing against the reform provisions. Among the key points made:

Many companies undoubtedly will avoid the high cost of complying with the new law simply by not setting up any pension plan—and the overall result could be a reduction in the number of private pension plans established for workers in the future.

The "rule of 45"—one of the choices on vesting—would encourage employers to hire younger employees and would discourage hiring of older workers, just because of the higher cost of vesting older workers under a company pension plan.

The law does not change the fact that, today, plan benefits are typically less than $100 a month. Thus even with improved vesting, a typical worker may be vested in very little benefits even after satisfying a minimum of five years service.

There will be no protection against inflation's erosion of pension benefits in this law—although this may be among the first future amendments to the '74 legislation.

[From the Washington Star-News, Aug 6, 1974]

Your Money's Worth: Pension Reform at Last—2

(By Sylvia Porter)

The historic pension reform bill to go on our statute books within a matter of days will, for the first time, provide guarantees that you will actually get the private pension benefits which you have been promised and which you have earned.

Who are "you"? The following Q. and A. will identify "you."

Q. How many workers are covered by this reform bill?

A. While the figures are slippery, estimates run from 28 million to 35 million workers, or about one-third to one-half of our current work force. This total covers millions of self-employed who will be able to set up their own plans under significantly liberalized and more attractive regulations.

Among those not touched: Government workers already covered by federal, state or local plans; those covered by church plans; workers under age 25; workers changing jobs more frequently than every five years; and to some extent, casual and part-time workers.

Q. Will all existing pension plans be covered under the new law or only new plans?

A. All plans will have to comply, although the timetables for compliance vary according to the provision.

Q. Is there any minimum size for a plan to be covered?

A. No, no minimums.

Q. Will the new law force an employer or union to set up a pension plan?

A. No. But if and when they do, their plans will have to conform to the law's new rules.

Q. What coverage is extended to the self-employed?

A. The law will permit a self-employed person to join an approved self-employed retirement plan (Keogh) and to put into it up to 15 percent of his earned income or $7,500, whichever is less—as against the previous limits of up to 10 percent or $2,500 a year. The amounts set aside are deductible from income tax each year and earn income tax-free until they are distributed on retirement. More on this in future columns.

Q. Is there a minimum age for eligibility?

A. Yes. To be covered by the vesting provisions of the law, you must be at least 25 and also must have worked at least one year for a company offering a covered pension plan. If you are under 25 and have worked for a firm which has a plan, you must receive, when you turn 25, credit for at least three years of service.

Q. Am I protected from an employer firing me to avoid giving me my pension?

A. Yes. It is illegal to do this under the new law. And there are strict penalties for such action.

Q. What about survivors' benefits?

A. Plans must include both of the following two provisions to pass pension benefits along to the surviving spouse if a covered retired worker dies;

If you, an employe, die on or after retirement, your pension plan must provide that at least 50 percent of your pension benefits go to your surviving spouse—unless you specifically waive this provision in writing, prior to retirement; and if a plan provides for pension benefits on early retirement, you must be given the chance to convert these benefits into benefits for your surviving spouse. Today, only one in five workers is under a plan with automatic survivors' benefits which permit a surviving spouse to get benefits if the worker dies. Pensions for survivors are virtually non-existent in plans covering fewer than 1,000 workers.

However, if you have accumulated 10 to 15 years of pension benefits and die before retirement age, all of your earned benefits may go down with you; your spouse may get nothing.

Q. What about pensions for part-time workers?

A. There is minimal protection for part-time or occasional workers, a gap likely to hurt women workers hardest.

Q. Any other critically important provisions?

A. Yes, Effective six months after enactment of the bill, each pension plan administrator must give each participant a plain-language description and a summary of the annual financial report of the plan. And effective January 1976, when you leave a job, your employer will be required to give you a full rundown on the pension benefits you have earned and to file this information with the Social Security Administration. Social Security's computers will automatically issue reminders to you of key facts about your pension plan benefits.

[From the Washington Star-News, Aug 7, 1974]

PENSION REFORM AT LAST—3

(By Sylvia Porter)

Until now, if your pension plan went bankrupt, it has been just too bad for you if the pension benefits on which you had been counting for your retirement years were wiped out. One estimate, based on a 1973 Treasury Department pension plan termination study, is that 750,000 workers whose pension benefits are vested (guaranteed) will not receive one cent during the next 20 years.

Until now, there have been no federal regulations protecting your pension plan against flagrant abuses by pension fund managers—such as the managers

lending themselves, their relatives or friends fat sums at below-market interest rates.

Until now, there has not been enough money in at least one out of three pension funds to pay off future benefits already earned by the beneficiaries.

These are three key areas in which there will be major, vitally important reforms under the 1974 pension reform law. Here are key aspects put together by Michael Gordon, one of the lawyers who worked out final details of this historic reform.

All pension plans now in effect will become fully funded to meet all pension payments owed their work forces within 40 years. And all "normal" costs of administering a pension plan will have to be funded currently, under the new law.

As an illustration of what this means to you, if any employer started a pension fund today under the previous law, he would have had to put aside funds this year to pay pension benefits based on service performed in 1974 only—but not to cover pension credits accumulated by work performed by you over the past 10–20 years which may count toward your future pension benefits. The naive assumption has been that when your time came to retire, your employer would be able to find the necessary funds to pay your promised pension.

Under the 1974 law, employers now must not only fund pension credits for your current service but must also accumulate over the next 30–40 years enough to fund in full all past services. This new rule will mean that about one in three present plans will be forced to increase substantially the amount of its contributions to its pension plans. However, a majority of plans already are in compliance since they conform to accepted funding standards.

Any employer who fails to accumulate adequate funds and adhere to the new timetable will have to pay a stiff penalty tax.

The law will provide protection against irresponsible pension fund managers who have engaged in disastrous self-dealing, highly qeustionable investments in many areas, over-investment in a company's own stock.

Specifically, the law will ban insiders from influencing sales or other transactions involving the assets of a pension fund. It will prohibit the export of pension assets to other countries and limit investment in a company's stock to 10 percent of the fund's assets.

A new Federal agency, the Pension Benefit Guarantee Corp.—similar to the Federal Deposit Insurance Corp., which protects bank depositors in the event of a bank failure—is to be set up to protect you aginst abrupt cancellation of your pension benefits if your plan goes bankrupt. Trustees are to be the Secretaries of the Departments of Labor, Treasury and Commerce.

If a plan failed, the fund could pay up to $750 a month to each individual covered by the plan—just as the FDIC reimburses up to $20,000 in deposits to each depositor in a covered bank which has failed. All plans, regardless of size, must buy the plan termination insurance. Exceptions: government plans, church plans, and plans involving professional service corporations (e.g. groups of doctors) with fewer than 25 members.

As soon as the law goes on the books, all covered employers must pay a head tax of 50 cents to $1 into the insurance fund. For multiemployer plans, plan termination coverage won't begin until Jan. 1, 1978, but single employer plans receive coverage more quickly—perhaps as soon as the law is passed. Priority will be given to paying those already retired should their plans collapse.

[From the Washington Star-News, Aug. 8, 1974]

Your Money's Worth: Pension Reform at Last—4

(By Sylvia Porter)

Under the new historic pension reform legislation of 1974, if you are a member of a pension plan which goes bankrupt, you will be protected by a new Pension Benefit Guarantee Corp. to be formed under the law and financed by employers whose pension plans are covered under the law.

Under the old law which the 1974 reform legislation will replace, you have had no protection, aside from the good will of your employer, against total loss of your pension benefits in the event your plan failed.

When the law is on the books, though, you will be able to appeal to the PBGC at Washington, D.C. 20216.

Also under this new law, you will be provided many other new rights and benefits not previously available—except through the generosity of some employers. These new rights and benefits will include vesting, safeguards against fund abuse, automatic survivors benefits, and many other vital protections.

But, be on guard! In many cases, the new safeguards will not go into effect immediately upon passage of the new law. You will have to be your own watchdog of your pension plan until all of the key provisions take effect. And after they do take effect, you still will have to know the names and places to which you will be able to appeal for help and information.

What can you do? Where can you turn for help if you suspect your plan or your benefits are in danger?

Within 30 days after enactment, the Labor Department will have set up an Office of Employe Benefits Security to deal with your questions and complaints about your pension and provisions of the new law. Write to this office at the U.S. Department of Labor, Washington, D.C. 20216, or to one of the Labor-Management Services offices in major U.S. cities.

Meanwhile, you can direct any complaint or query involving the new law and your rights under it to Labor-Management & Welfare Pension Reports, Director of Inquiries, Charles Carlson, Washington, D.C. 20216. (Phone: 303—427-7129.)

If you have evidence that the money in your pension fund is being invested, spent or loaned illegally—e.g. loaned interest-free to a fund trustee or friend or relative of a trustee—contact your state prosecutor or when the pension reform law is on the books, the U.S. Department of Labor, Washington, D.C. 20216.

Not until January 1976 will the new rules go into effect requiring employers to disclose all key details of your pension rights to you when you leave your job and to file this same information with the Social Security Administration. Not until six months after enactment of this law will the new requirement go into effect requiring your employer to give you a plain-language description of your plan when you join it and a summary of the plan's financial status at that time.

Meanwhile, however, most private pension plans with 26 or more participants are covered by the 1958 Welfare and Pension Plan Disclosure Act. And under this act, your employer is supposed to provide you, the employe, with detailed, plain-language answers to such questions as "What are the service requirements of the plan?" and "Under what cricumstances will a worker not receive pension benefits?"

If your employer has not provided you with such a plan description, write or phone the Office of Labor-Management & Welfare Pension Reports (address and phone details above) or contact the nearest area office of the Labor Department's Labor-Management Services Administration.

Also get in touch with this Labor-Management Services office if you have any evidence of discrimination in your pension plan. Illustrations might be if a disproportionately large amount of the pension fund is going into benefits for a handful of executives while lower-paid employes aren't receiving any benefits at all or if you are being denied pension rights solely because of your age.

In the economic-social sphere, this 1974 session of Congress has chalked up a sorry record. But for this historic reform law alone, it has earned a solid place in history.

[From the Congressional Record—Digest, Senate, August 22, 1974]

Pension plans—enrollment correction: Senate agreed to H. Con. Res. 609, authorizing corrections to be made in the enrollment of H.R. 2, pension reform bill.

* * * * * * *

Pension Reform: By unanimous vote of 85 yeas, Senate agreed to the conference report on H.R. 2, to revise the Welfare and Pension Plans Disclosure Act, thus clearing the measure for the White House.

On September 2, 1974, the President approved H.R. 2 and signed into law the Employee Retirement Income Security Act of 1974 (Public Law 93–406).

[The full text of Public Law 93–406 follows:]

Public Law 93-406
93rd Congress, H. R. 2
September 2, 1974

An Act

88 STAT. 829

To provide for pension reform.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Employee Retirement Income Security Act of 1974.
29 USC 1001 note.

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Employee Retirement Income Security Act of 1974".

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Subtitle A—General Provisions

FINDINGS AND DECLARATION OF POLICY

29 USC 1001.

Sec. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans is carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before

requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

DEFINITIONS

SEC. 3. For purposes of this title: 29 USC 1002.

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions). 29 USC 186.

(2) The terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(A) provides retirement income to employees, or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other

matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

(6) The term "employee" means any individual employed by an employer.

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

(9) The term "person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

(10) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone. The term "United States" when used in the geographic sense means the States and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

67 Stat. 462.

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act.

29 USC 141.
45 USC 151.

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation.

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account.

(15) The term "relative" means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

(16) (A) The term "administrator" means—

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term "plan sponsor" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(17) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(18) The term "adequate consideration" when used in part 4 of subtitle B means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, or (ii) if the security is not traded on such a national securities exchange, a price not less 15 USC 78f.

favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

(19) The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan contains a provision described in section 203(a)(3).

Post, p. 854.

(20) The term "security" has the same meaning as such term has under section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1)).

(21)(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 405(c)(1)(B).

Post, p. 878.

(B) If any money or other property of an employee benefit plan is invested in securities issued by an investment company registered under the Investment Company Act of 1940, such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this title, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

15 USC 80a-51.

(22) The term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefit under the plan which the Secretary of the Treasury finds to be a benefit described in section 204(b)(1)(G).

Post, p. 858.

(23) The term "accrued benefit" means—

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided

in section 204(c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or Post, p. 858.

(B) in the case of a plan which is an individual account plan, the balance of the individual's account.

(24) The term "normal retirement age" means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

(25) The term "vested liabilities" means the present value of the immediate or deferred benefits available at normal retirement age for participants and their beneficiaries which are nonforfeitable.

(26) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by a trustee or a named fiduciary (as defined in section 402(a)(2)) pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination. Post, p. 875.

(27) The term "present value", with respect to a liability, means the value adjusted to reflect anticipated events. Such adjustments shall conform to such regulations as the Secretary of the Treasury may prescribe.

(28) The term "normal service cost" or "normal cost" means the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(29) The term "accrued liability" means the excess of the present value, as of a particular valuation date of a pension plan, of the projected future benefit costs and administrative expenses for all plan participants and beneficiaries over the present value of future contributions for the normal cost of all applicable plan participants and beneficiaries. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(30) The term "unfunded accrued liability" means the excess of the accrued liability, under an actuarial cost method which so provides, over the present value of the assets of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(31) The term "advance funding actuarial cost method" or "actuarial cost method" means a recognized actuarial technique utilized for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

(32) The term "governmental plan" means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies, and which is financed by contributions required under that Act and any plan of an international 45 USC 215 note, 228a.

organization which is exempt from taxation under the provisions of
22 USC 288 note. the International Organizations Immunities Act (59 Stat. 669).

(33) (A) The term "church plan" means (i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of the
26 USC 501. Internal Revenue Code of 1954, or (ii) a plan described in subparagraph (C).

(B) The term "church plan" (notwithstanding the provisions of subparagraph (A)) does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1954), or
26 USC 513.

(ii) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501 of the Internal Revenue Code of 1954.

(C) Notwithstanding the provisions of subparagraph (B) (ii), a plan in existence on January 1, 1974, shall be treated as a "church plan" if it is established and maintained by a church or convention or association of churches for its employees and employees of one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501 of the Internal Revenue Code of 1954. The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence of this subparagraph shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

(34) The term "individual account plan" or "defined contribution plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(35) The term "defined benefit plan" means a pension plan other than an individual account plan; except that a pension plan which is not an individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant—

Post, p. 853.
(A) for the purposes of section 202, shall be treated as an individual account plan, and

Post, p. 858.
(B) for the purposes of paragraph (23) of this section and section 204, shall be treated as an individual account plan to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

(36) The term "excess benefit plan" means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits
Post, p. 979. imposed by section 415 of the Internal Revenue Code of 1954 on plans to which that section applies, without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.

(37) (A) The term "multiemployer plan" means a plan—

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to one or more collective-bargaining agreements between an employee organization and more than one employer,

(iii) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions,

(iv) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who had employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

(v) which satisfies such other requirements as the Secretary may by regulations prescribe.

(B) For purposes of this paragraph—

(i) if a plan is a multiemployer plan within the meaning of subparagraph (A) for any plan year, clause (iii) of subparagraph (A) shall be applied by substituting "75 percent" for "50 percent" for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions, and

(ii) all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(3)(C) of such Code) shall be deemed to be one employer. 26 USC 1563.

(38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 402(a)(2))— Post, p. 875.

(A) who has the power to manage, acquire, or dispose of any asset of a plan;

(B) who is (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is a bank, as defined in that Act; or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and 15 USC 80b-20.

(C) has acknowledged in writing that he is a fiduciary with respect to the plan.

(39) The terms "plan year" and "fiscal year of the plan" mean with respect to a plan, calendar, policy, or fiscal year on which the records of the plan are kept.

COVERAGE

SEC. 4. (a) Except as provided in subsection (b) and in sections 201, 301, and 401, this title shall apply to any employee benefit plan if it is established or maintained— 29 USC 1003. Post, pp. 852, 868, 874.

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this title shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 3(32));

(2) such plan is a church plan (as defined in section 3(33)) with respect to which no election has been made under section 410(d) of the Internal Revenue Code of 1954;

Post, p. 898.

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 3(36)) and is unfunded.

Subtitle B—Regulatory Provisions

Part I—Reporting and Disclosure

DUTY OF DISCLOSURE AND REPORTING

29 USC 1021.

Sec. 101. (a) The administrator of each employee benefit plan shall cause to be furnished in accordance with section 104(b) to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan—

(1) a summary plan description described in section 102(a)(1); and

(2) the information described in section 104(b)(3) and 105(a) and (c).

(b) The administrator shall, in accordance with section 104(a), file with the Secretary—

(1) the summary plan description described in section 102(a)(1);

(2) a plan description containing the matter required in section 102(b);

(3) modifications and changes referred to in section 102(a)(2);

(4) the annual report containing the information required by section 103; and

(5) terminal and supplementary reports as required by subsection (c) of this section.

(c)(1) Each administrator of an employee pension benefit plan which is winding up its affairs (without regard to the number of participants remaining in the plan) shall, in accordance with regulations prescribed by the Secretary, file such terminal reports as the Secretary may consider necessary. A copy of such report shall also be filed with the Pension Benefit Guaranty Corporation.

(2) The Secretary may require terminal reports to be filed with regard to any employee welfare benefit plan which is winding up its affairs in accordance with regulations promulgated by the Secretary.

(3) The Secretary may require that a plan described in paragraph (1) or (2) file a supplementary or terminal report with the annual report in the year such plan is terminated and that a copy of such supplementary or terminal report in the case of a plan described in paragraph (1) be also filed with the Pension Benefit Guaranty Corporation.

(d) Cross Reference.—

For regulations relating to coordination of reports to the Secretaries of Labor and the Treasury, see section 3004.

PLAN DESCRIPTION AND SUMMARY PLAN DESCRIPTION

SEC. 102. (a)(1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 104(b). The summary plan description shall include the information described in subsection (b), shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 104(b)(1). 29 USC 1022.

(2) A plan description (containing the information required by subsection (b)) of any employee benefit plan shall be prepared on forms prescribed by the Secretary, and shall be filed with the Secretary as required by section 104(a)(1). Any material modification in the terms of the plan and any change in the information described in subsection (b) shall be filed in accordance with section 104(a)(1)(D).

(b) The plan description and summary plan description shall contain the following information: The name and type of administration of the plan; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 503 of this Act).

ANNUAL REPORTS

SEC. 103. (a)(1)(A) An annual report shall be published with respect to every employee benefit plan to which this part applies. Such report shall be filed with the Secretary in accordance with section 104(a), and shall be made available and furnished to participants in accordance with section 104(b). 29 USC 1023.

(B) The annual report shall include the information described in subsections (b) and (c) and where applicable subsections (d) and (e) and shall also include—

(i) a financial statement and opinion, as required by paragraph (3) of this subsection, and

(ii) an actuarial statement and opinion, as required by paragraph (4) of this subsection.

(2) If some or all of the information necessary to enable the administrator to comply with the requirements of this title is maintained by—

(A) an insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account,

(B) a bank or similar institution which holds some or all of the assets of the plan in a common or collective trust or a separate trust, or custodial account, or

(C) a plan sponsor as defined in section 3(16)(B),

such carrier, organization, bank, institution, or plan sponsor shall transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year (or such other date as may be prescribed under regulations of the Secretary).

Financial statements, examination.

(3)(A) Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(3) of this section and the summary material required under section 104(b)(3) present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report. In a case where a plan is not required to file an annual report, the requirements of this paragraph shall not apply. In a case where by reason of section 104(a)(2) a plan is required only to file a simplified annual report, the Secretary may waive the requirements of this paragraph.

Waiver.

(B) In offering his opinion under this section the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b)(3)(G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

"Qualified public accountant."

(D) For purposes of this title, the term "qualified public accountant" means—

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

Enrolled actuary.

(4)(A) The administrator of an employee pension benefit plan subject to the reporting requirement of subsection (d) of this section shall engage, on behalf of all plan participants, an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section. In a case where a plan is not required to file an annual report, the

requirement of this paragraph shall not apply, and, in a case where by reason of section 104(a)(2), a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section—

(i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

(ii) represent his best estimate of anticipated experience under the plan.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of this title, the term "enrolled actuary" means an actuary enrolled under subtitle C of title III of this Act.

"Enrolled actuary."

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under section 103(b) as to which any qualified public accountant has expressed an opinion, if he so states his reliance.

Post, p. 1002.

(b) An annual report under this section shall include a financial statement containing the following information:

Financial statement.

(1) With respect to an employee welfare benefit plan: a statement of assets and liabilities; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of any significant changes in plan benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of such pension plan.

(3) With respect to all employee benefit plans, the statement required under paragraph (1) or (2) shall have attached the following information in separate schedules:

(A) a statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan;

Assets and liabilities.

Receipts and disbursements.

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

Assets for investment.

(C) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

Parties in interest, transactions.

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the plan, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

Loans or fixed income obligations in default.

(E) a schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

Leases in default.

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

Assets and liabilities.

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this subsection; and

Reportable transactions.

(H) a schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify

the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction. For purposes of the preceding sentence, the term "reportable transaction" means a transaction to which the plan is a party if such transaction is—

(i) a transaction involving an amount in excess of 3 percent of the current value of the assets of the plan;

(ii) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a plan year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the plan;

(iii) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the plan year exceeds 3 percent of the current value of the assets of the plan; or

(iv) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the plan year respecting a security is required to be reported by reason of clause (i).

(4) The Secretary may, by regulation, relieve any plan from filing a copy of a statement of assets and liabilities (or other information) described in paragraph (3)(G) if such statement and other information is filed with the Secretary by the bank or insurance carrier which maintains the common or collective trust or separate account.

Additional information.

(c) The administrator shall furnish as a part of a report under this section the following information:

(1) The number of employees covered by the plan.

(2) The name and address of each fiduciary.

(3) Except in the case of a person whose compensation is minimal (determined under regulations of the Secretary) and who performs solely ministerial duties (determined under such regulations), the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian.

(5) Such financial and actuarial information including but not limited to the material described in subsections (b) and (d) of this section as the Secretary may find necessary or appropriate.

Actuarial statement.

Post, p. 869.
Post, pp. 1014, 868.

(d) With respect to an employee pension benefit plan (other than (A) a profit sharing, savings, or other plan, which is an individual account plan, (B) a plan described in section 301(b), or (C) a plan described both in section 4021(b) and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 301(a)) an annual report under this

section for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) The date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed.

(2) The date and amount of the contribution (or contributions) received by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) The following information applicable to the plan year for which the report is filed: the normal costs, the accrued liabilities, an identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to determine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 302.

Post, p. 869.

(4) The number of participants and beneficiaries, both retired and nonretired, covered by the plan.

(5) The current value of the assets accumulated in the plan, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 302 and a statement explaining the basis of such valuation of present value of assets.

(6) The present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories as set forth in section 4044 of this Act, and the actuarial assumptions used in these computations. The Secretary shall establish regulations defining (for purposes of this section) "termination priority categories" and acceptable methods, including approximate methods, for allocating the plan's liabilities to such termination priority categories.

Post, p. 1025.

(7) A certification of the contribution necessary to reduce the accumulated funding deficiency to zero.

(8) A statement by the enrolled actuary—

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the requirements of section 302(c)(3) (relating to reasonable actuarial assumptions and methods) have been complied with.

Post, p. 869.

(9) A copy of the opinion required by subsection (a)(4).

(10) Such other information regarding the plan as the Secretary may by regulation require.

(11) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

Insurance company statement.

(e) If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the plan year and enumerating—

(1) the premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and adminis-

trative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service, or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

FILING WITH SECRETARY AND FURNISHING INFORMATION TO PARTICIPANTS

SEC. 104. (a)(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary— 29 USC 1024.

(A) the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing); Annual report.

(B) the plan description within 120 days after such plan becomes subject to this part and an updated plan description, no more frequently than once every 5 years, as the Secretary may require;

(C) a copy of the summary plan description at the time such summary plan description is required to be furnished to participants and beneficiaries pursuant to subsection (b)(1)(B) of this section; and

(D) modifications and changes referred to in section 102(a)(2) within 60 days after such modification or change is adopted or occurs, as the case may be.

The Secretary shall make copies of such plan descriptions, summary plan descriptions, and annual reports available for inspection in the public document room of the Department of Labor. The administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

(2)(A) With respect to annual reports required to be filed with the Secretary under this part, he may by regulation prescribe simplified annual reports for any pension plan which covers less than 100 participants. In addition, and without limiting the foregoing sentence, the Secretary may waive or modify the requirements of section 103(d)(6) in such cases or categories of cases as to which he finds that (i) the interests of the plan participants are not harmed thereby and (ii) the expense of compliance with the specific requirements of section 103(d)(6) is not justified by the needs of the participants, the Pension Benefit Guaranty Corporation, and the Department of Labor for some portion or all of the information otherwise required under section 103(d)(6).

(B) Nothing contained in this paragraph shall preclude the Secretary from requiring any information or data from any such plan to which this part applies where he finds such data or information is necessary to carry out the purposes of this title nor shall the Secretary

be precluded from revoking provisions for simplified reports for any such plan if he finds it necessary to do so in order to carry out the objectives of this title.

Reporting requirements, exemption.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this title, or may provide for simplified reporting and disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans.

(4) The Secretary may reject any filing under this section—

(A) if he determines that such filing is incomplete for purposes of this part; or

(B) if he determines that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 103(a)(3)(A) or section 103(a)(4)(B).

(5) If the Secretary rejects a filing of a report under paragraph (4) and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the Secretary makes his determination under paragraph (4) to reject the filing, and if the Secretary deems it in the best interest of the participants, he may take any one or more of the following actions—

(A) retain an independent qualified public accountant (as defined in section 103(a)(3)(D)) on behalf of the participants to perform an audit,

(B) retain an enrolled actuary (as defined in section 103(a)(4)(C) of this Act) on behalf of the plan participants, to prepare an actuarial statement.

(C) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this part, or

(D) take any other action authorized by this title.

The administrator shall permit such accountant or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report, and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(b) Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary, plan description, and all modifications and changes referred to in section 102(a)(1)—

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 102 which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 102 every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 102(a)(1), a summary description of such modification or change shall be

furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan.

(2) The administrator shall make copies of the plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 103(b)(3) and such other material as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(c) The Secretary may by regulation require that the administrator of any employee benefit plan furnish to each participant and to each beneficiary receiving benefits under the plan a statement of the rights of participants and beneficiaries under this title.

(d) Cross Reference—

For regulations respecting coordination of reports to the Secretaries of Labor and the Treasury, see section 3004.

REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

Sec. 105. (a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information— 29 USC 1025.

(1) the total benefits accrued, and

(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12 month period.

(c) Each administrator required to register under section 6057 of the Internal Revenue Code of 1954 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of such Code. Post, p. 943.

(d) Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.

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REPORTS MADE PUBLIC INFORMATION

29 USC 1026.

SEC. 106. (a) Except as provided in subsection (b), the contents of the descriptions, annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in section 105(a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act may be disclosed under such Act.

42 USC 401.

RETENTION OF RECORDS

29 USC 1027.

SEC. 107. Every person subject to a requirement to file any description or report or to certify any information therefor under this title or who would be subject to such a requirement but for an exemption or simplified reporting requirement under section 104(a) (2) or (3) of this title shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption or simplified reporting requirement under section 104(a) (2) or (3).

RELIANCE ON ADMINISTRATIVE INTERPRETATIONS

29 USC 1028.
Post, p. 891.
Post, p. 888.

SEC. 108. In any criminal proceeding under section 501 based on any act or omission in alleged violation of this part or section 412, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with this part or section 412, if he pleads and proves that the act of omission complained of was in good faith, in conformity with, and in reliance on any regulation or written ruling of the Secretary, or (2) publish and file any information required by any provision of this part if he pleads and proves that he published and filed such information in good faith, and in conformity with any regulation or written ruling of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the plan description, annual reports, and other reports required by this title, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

FORMS

29 USC 1029.

SEC. 109. (a) Except as provided in subsection (b) of this section, the Secretary may require that any information required under this title to be submitted to him, including but not limited to the information required to be filed by the administrator pursuant to section

103(b)(3) and (c), must be submitted on such forms as he may prescribe.

(b) The financial statement and opinion required to be prepared by an independent qualified public accountant pursuant to section 103(a)(3)(A), the actuarial statement required to be prepared by an enrolled actuary pursuant to section 103(a)(4)(A) and the summary plan description required by section 102(a) shall not be required to be submitted on forms.

(c) The Secretary may prescribe the format and content of the summary plan description, the summary of the annual report described in section 104(b)(3) and any other report, statements or documents (other than the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated), which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan.

ALTERNATIVE METHODS OF COMPLIANCE

SEC. 110. (a) The Secretary on his own motion or after having received the petition of an administrator may prescribe an alternative method for satisfying any requirement of this part with respect to any pension plan, or class of pension plans, subject to such requirement if he determines— 29 USC 1030.

(1) that the use of such alternative method is consistent with the purposes of this title and that it provides adequate disclosure to the participants and beneficiaries in the plan, and adequate reporting to the Secretary,

(2) that the application of such requirement of this part would—

(A) increase the costs to the plan, or

(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved; and

(3) that the application of this part would be adverse to the interests of plan participants in the aggregate.

(b) An alternative method may be prescribed under subsection (a) by regulation or otherwise. If an alternative method is prescribed other than by regulation, the Secretary shall provide notice and an opportunity for interested persons to present their views, and shall publish in the Federal Register the provisions of such alternative method. Publication in Federal Register.

REPEAL AND EFFECTIVE DATE

SEC. 111. (a)(1) The Welfare and Pension Plans Disclosure Act is repealed except that such Act shall continue to apply to any conduct and events which occurred before the effective date of this part. 29 USC 1031. 29 USC 301 note.

(2)(A) Section 664 of title 18, United States Code, is amended by striking out "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974".

(B)(i) Section 1027 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "title I of the Employee Retirement Income Security Act of 1974", and by striking out "Act" each place it appears and inserting in lieu thereof "title".

(ii) The heading for such section is amended by striking out "WELFARE AND PENSION PLANS DISCLOSURE ACT" and inserting in lieu thereof "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974".

(iii) The table of sections of chapter 47 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" in the item relating to section 1027 and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

Ante, p. 829.

(C) Section 1954 of such title 18 is amended by striking out "any plan subject to the provisions of the Welfare and Pension Plans Disclosure Act as amended" and inserting in lieu thereof "any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974"; and by striking out "sections 3(3) and 5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended" and inserting in lieu thereof "sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974".

(D) Section 211 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 441) is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

Effective date.

(b)(1) Except as provided in paragraph (2), this part (including the amendments and repeals made by subsection (a)) shall take effect on January 1, 1975.

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may postpone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure Act (and of any amendment made by subsection (a)(2)) and the effective date of any provision of this part, until the beginning of the first plan year of such plan which begins after January 1, 1975.

(c) The provisions of this title authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act.

Part 2—Participation and Vesting

COVERAGE

29 USC 1051.

Sec. 201. This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)) other than—

(1) an employee welfare benefit plan;

(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(3) (A) a plan established and maintained by a society, order, or association described in section 501(c) (8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to or under such plan are made by employers of participants in such plan, or

26 USC 501.

(B) a trust described in section 501(c)(18) of such Code;

(4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of the Internal Revenue Code of 1954 and which does not at any time after the date of enactment of this Act provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of the Internal Revenue Code of 1954;

26 USC 736.

(6) an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954, or a retirement bond described in section 409 of such Code; or

Post, p. 959.
Post, p. 964.

(7) an excess benefit plan.

MINIMUM PARTICIPATION STANDARDS

SEC. 202. (a)(1)(A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates— 29 USC 1052.

(i) the date on which the employee attains the age of 25; or

(ii) the date on which he completes 1 year of service. Age and service requirements.

(B)(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "3 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1954) by an employer which is exempt from tax under section 501(a) of such Code, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "30" for "25". This clause shall not apply to any plan to which clause (i) applies. 26 USC 170. 26 USC 501.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age, unless—

(A) the plan is a—

(i) defined benefit plan, or

(ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury), and

(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

(3)(A) For purposes of this section, the term "year of service" means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced. "Year of service."

(B) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary.

(C) For purposes of this section, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary. "Hour of service."

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b)(1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a)(1).

(2) In the case of any employee who has any 1-year break in service (as defined in section 203(b)(3)(A)) under the plan to which the service requirements of clause (i) of subsection (a)(1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) in the case of any participant who has any 1-year break in service (as defined in section 203(b)(3)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3)) after his return.

(4) In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this paragraph by reason of any prior break in service.

MINIMUM VESTING STANDARDS

29 USC 1053.

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

(A) A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100.

(C) (i) A plan satisfies the requirements of this subparagraph if a participant who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

If years of service equal or exceed—	and sum of age and service equals or exceeds—	then the nonforfeitable percentage is—
5	45	50
6	47	60
7	49	70
8	51	80
9	53	90
10	55	100.

(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any participant who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

(3) (A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 205).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 302(c)(8).

(D) (i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 204(c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 204(c)(2)(C) (if such subsection applies) on the date of such

repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made before the participant has any 1-year break in service commencing after the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of this Act, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before the date of the enactment of this Act if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after the date of the enactment of this Act. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

Regulations.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) CROSS REFERENCE.—

For nonforfeitably where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 206(c).

(b)(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 22, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2), the plan may not disregard any such year of service during which the employee was a participant;

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions,

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970; and

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date.

"Year of service."

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

"Hour of service."

(B) For purposes of this section, the term "hour of service" has the meaning provided by section 202(a)(3)(C).

(C) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as determined under regulations of the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

"1-year break in service."

(3)(A) For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 204(b)(1)(F) who has any 1-year break in service, years of service after such break shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such break.

(D) For purposes of paragraph (1), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

(4) Cross References.—

(A) For definitions of "accrued benefit" and "normal retirement age", see sections 3 (23) and (24).

(B) For effect of certain cash out distributions, see section 204(d)(1).

Plan amendment.

(c)(1)(A) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(2) Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary of the Treasury to preclude the discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1954.

Post, p. 938.

(3) The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are

nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this part, the term "class year plan" means a profit sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

(d) A pension plan may allow for nonforfeitable benefits after a lesser period and in greater amounts than are required by this part.

BENEFIT ACCRUAL REQUIREMENTS

29 USC 1054. SEC. 204. (a) Each pension plan shall satisfy the requirements of subsection (b)(2), and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1).

(b)(1)(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this suparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon

his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to the date of the enactment of this Act, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 202(a)(3)(A).

"Year of service."

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 301(b) (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 301(b) were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act which benefits under the plan—

42 USC 401.

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(2) A plan satisfies the requirements of this paragraph if—

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

"Year of participation."

(3)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 202(b)) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

Part time employees.

(B) For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

Service less than 1,000 hours.

(C) For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

Seasonal industry.

(D) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary.

Maritime industry.

(E) For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(c)(1) For purposes of this section and section 203 an employee's accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2)(A) In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B)(i) In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the

annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

"Appropriate conversion factor."

(ii) For purposes of clause (i), the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.

"Accumulated contributions."

(C) For purposes of this subsection, the term "accumulated contributions" means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section 203(a)(2) does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which section 203(a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

"Mandatory contributions."

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Conversion factor, adjustment.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary of the Treasury determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

Accrued benefit, limitation.

(E) The accrued benefit derived from employee contributions shall not exceed the greater of—

(i) the employee's accrued benefit under the plan, or

(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.

(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(4) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(d) Notwithstanding section 203(b)(1), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

(e) For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

(1) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(2) resumes employment covered under the plan, and

(3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

In the case of a defined contribution plan, the plan provision required under this subsection may provide that such repayment must be made before the participant has any 1-year break in service commencing after such withdrawal.

(f) For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

(g) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 302(c)(8).

(h) Cross Reference.—

For special rules relating to class year plans and plan provisions adopted to preclude discrimination, see sections 203(c) (2) and (3).

JOINT AND SURVIVOR ANNUITY REQUIREMENT

29 USC 1055.

Sec. 205. (a) If a pension plan provides for the payment of benefits in the form of an annuity, such plan shall provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

(b) In the case of a plan which provides for the payment of benefits before the normal retirement age as defined in section 3(24), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(1) the date the employee reaches the earliest retirement age, or

(2) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(c)(1) A plan described in subsection (b) does not meet the requirements of subsection (a) unless, under the plan, a participant has a reasonable period in which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subsection (b) ends and ending on the date on which he reaches normal retirement age if he continues his employment during that period.

(2) A plan does not meet the requirements of this subsection unless, in the case of such election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he had made an election under this subsection immediately prior to his retirement and if his retirement had occurred on the date immediately preceding the date of his death and within the period within which an election can be made.

(d) A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made under subsection (c)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

(e) A plan shall not be treated as satisfying the requirements of this section unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subsection) not to take such joint and survivor annuity.

(f) A plan shall not be treated as not satisfying the requirements of this section solely because, under the plan there is a provision that any election under subsection (c) or (e), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

(1) the participant dies from accidental causes,

(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) such election or revocation is made before such accident occurred.

(g) For purposes of this section: Definitions.

(1) The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability).

(2) The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(3) The term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single annuity for the life of the participant.

(h) For the purposes of this section, a plan may take into account in any equitable fashion (as determined by the Secretary of the Treasury) any increased costs resulting from providing joint and survivor annuity benefits under an election made under subsection (c).

(i) This section shall apply only if—

(1) the annuity starting date did not occur before the effective date of this section, and

(2) the participant was an active participant in the plan on or after such effective date.

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

29 USC 1056.

SEC. 206. (a) Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

(1) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(3) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, such plan shall provide that a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury.

(b) If—

(1) a participant or beneficiary is receiving benefits under a pension plan, or

(2) a participant is separated from the service and has nonforfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act or the Railroad Retirement Act of 1937, or any increase in the wage base under such title II, if such increase takes place after the date of the enactment of this Act or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

42 USC 401.
45 USC 228a.

(c) No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable) is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 203(a)(3)(D)(iii).

(d)(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before the

date of enactment of this Act. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of such Code.

Post, p. 971.

TEMPORARY VARIANCES FROM CERTAIN VESTING REQUIREMENTS

SEC. 207. In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of enactment of this Act, the administrator petitions the Secretary, the Secretary may prescribe an alternate method which shall be treated as satisfying the requirements of section 203(a)(2) or 204(b)(1) (other than subparagraph (D) thereof) or both for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

29 USC 1057.

(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 303 or 304 of this Act would be inadequate.

Post, pp. 872, 873.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the administrator petitions the Secretary for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.

MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS

SEC. 208. A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after the date of the enactment of this Act, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation.

29 USC 1058.

RECORDKEEPING AND REPORTING REQUIREMENTS

SEC. 209. (a)(1) Except as provided by paragraph (2) every employer shall, in accordance with regulations prescribed by the Secretary, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the

29 USC 1059.

Secretary, to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 203 (b)(3)(A)).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.

(2) If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary, make the reports, required by paragraph (1).

Noncompliance, penalty.

(b) If any person who is required, under subsection (a), to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

PLANS MAINTAINED BY MORE THAN ONE EMPLOYER, PREDECESSOR PLANS, AND EMPLOYER GROUPS

29 USC 1060.

SEC. 210. (a) Notwithstanding any other provision of this part or part 3, the following provisions of this subsection shall apply to a plan maintained by more than one employer:

(1) Section 202 shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 203 and 204 shall be applied as if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 302 shall be determined as if all participants in the plan were employed by a single employer.

(b) For purposes of this part and part 3—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

(c) For purposes of sections 202, 203, and 204, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(4) and (e)(3)(C) of such code) shall be treated as employed by a single employer.

26 USC 1563.

With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 302 shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

(d) For purposes of sections 202, 203, and 204, under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c).

EFFECTIVE DATES

SEC. 211. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act. 29 USC 1061.

(b)(1) Except as otherwise provided in subsection (d), sections 205, 206(d), and 208 shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 204 and 205 solely by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 306(c), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act or the Internal Revenue Code of 1954 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on the date of enactment of this Act are not less favorable to participants, in the aggregate, than the rules provided under sections 202, 203, and 204. 68A Stat. 3. 26 USC 1 et seq.

(2) For purposes of paragraph (1), the term "supplementary or special plan provision" means any plan provision which— "Supplementary or special plan provision."

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of the Internal Revenue Code of 1954 relating to Post, p. 938.

participation, vesting, funding, and form of benefit, this part shall apply to the first plan year to which such election applies and to all subsequent plan years.

(e)(1) No pension plan to which section 202 applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 202 first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 202(b), or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 203 applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 203 first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 202(b)(3), or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

Part 3—Funding

COVERAGE

29 USC 1081.

Sec. 301. (a) This part shall apply to any employee pension benefit plan described in section 4(a), (and not exempted under section 4(b)), other than—

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b);

(3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(4)(A) a plan which is established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to or under such plan are made by employers of participants in such plan; or

26 USC 501.

(B) a trust described in section 501(c)(18) of such Code;

(5) a plan which has not at any time after the date of enactment of this Act provided for employer contributions;

(6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of the Internal Revenue Code of 1954;

26 USC 736.

(7) an individual retirement account or annuity as described in section 408(a) of the Internal Revenue Code of 1954, or a retirement bond described in section 409 of such Code;

Post, p. 959.

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 3(35)(B) of this title; or

(9) an excess benefit plan.

(b) For the purposes of paragraph (2) of subsection (a) a plan is an "insurance contract plan" if— "Insurance contract plan."

(1) the plan is funded exclusively by the purchase of individual insurance contracts,

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary of the Treasury to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

MINIMUM FUNDING STANDARDS

SEC. 302. (a)(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 305) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency. 29 USC 1082.

(2) For the purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years. "Accumulated funding deficiency."

(b)(1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section. Funding standard account.

(2) For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this

part applies, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 303 (c)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, and

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D).

(3) For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years.

(C) the amount of the waived funding deficiency (within the meaning of section 303(c)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater. 88 STAT. 870 88 STAT. 871

(5) The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(c)(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2)(A) For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this part, the value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary of the Treasury.

(3) For purposes of this part, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or 42 USC 1305.

(B) a change in the definition of the term "wages" under section 3121 of the Internal Revenue Code of 1954, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of the Internal Revenue Code of 1954, 26 USC 3121. 26 USC 401.

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary of the Treasury. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of the Treasury.

(6) If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (g)) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2), (B), (C), and (D) and (3)(B) of subsection (b) which are required to be amor-

88 STAT. 871
88 STAT. 872
"Full funding limitation."

tized shall be considered fully amortized for purposes of such paragraphs.

(7) For purposes of paragraph (6), the term "full funding limitation" means the excess (if any) of—

(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).

(8) For purposes of this part, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment or, within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless he determines that such amendment is necessary because of a substantial business hardship (as determined under section 303(b)) and that waiver under section 303(a) is unavailable or inadequate.

(9) For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(10) For purposes of this part, any contributions for a plan year made by an employer after the last day of such plan year, but not later than 2½ months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such 2½ month period may be extended for not more than 6 months under regulations prescribed by the Secretary of the Treasury.

(d) Cross Reference.—For alternative amortization method for certain multiemployer plans see section 1013(d) of this Act.

Post, p. 923.

VARIANCE FROM MINIMUM FUNDING STANDARD

29 USC 1083.

Sec. 303. (a) If an employer, or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan are unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary of the Treasury may waive the requirements of section 302(a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under section 302(b)(2)(C). The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

Waiver.

(b) For purposes of this part, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether— Substantial business hardship.

(1) the employer is operating at an economic loss, 88 STAT. 872

(2) there is substantial unemployment or underemployment in the trade or business and in the industry concerned, 88 STAT. 873

(3) the sales and profits of the industry concerned are depressed or declining, and

(4) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(c) For purposes of this part, the term "waived funding deficiency" means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C) of section 302) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions. "Waived funding deficiency."

(d) Cross Reference.—

For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1954, see section 412(d) of such Code.

EXTENSION OF AMORTIZATION PERIODS

Sec. 304. (a) The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B) of section 302) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would— 29 USC 1084.

(1) result in—

(A) a substantial risk to the voluntary continuation of the plan, or

(B) a substantial curtailment of pension benefit levels or employee compensation, and

(2) be adverse to the interests of plan participants in the aggregate.

(b)(1) No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 303(a) or an extension of time under subsection (a) of this section is in effect with respect to the plan, or if a plan amendment described in section 302(c)(8) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(2) Paragraph (1) shall not apply to any plan amendment which— Nonapplicability.

(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan.

(B) only repeals an amendment described in section 302(c)(8), or

(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of the Internal Revenue Code of 1954.

Post, pp. 959, 964, 898, 924, 979.

ALTERNATIVE MINIMUM FUNDING STANDARD

Sec. 305. (a) A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this section. 26 USC 401. 29 USC 1085.

(b) For a plan year the alternative minimum funding standard accounts shall be— 88 STAT. 873 88 STAT. 874

(1) charged with the sum of—

(A) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

(B) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

(C) an amount equal to the excess, if any, of credits to the alternative minimum funding standard account for all prior plan years over charges to such account for all such years, and

(2) credited with the amount considered contributed by the employer to or under the plan (within the meaning of section 302(c)(10)) for the plan year.

(c) The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under section 302(b)(5) with respect to the funding standard account.

EFFECTIVE DATES

29 USC 1086.

SEC. 306. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b) Except as otherwise provided in subsections (c) and (d), in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c) (1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee representatives and one or more employers, this part shall apply only with respect to plan years beginning after the earlier of the date specified in subparagraph (A) or (B) of section 211(c)(1).

(2) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

(d) In the case of a plan the administrator of which elects under section 1017(d) of this Act to have the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit to apply to a plan year and to all subsequent plan years, this part shall apply to plan years beginning on the earlier of the first plan year to which such election applies or the first plan year determined under subsections (a), (b), and (c) of this section.

Post, p. 934.

(e) In the case of a plan maintained by a labor organization which is exempt from tax under section 501(c)(5) of the Internal Revenue Code of 1954 exclusively for the benefit of its employees and their beneficiaries, this part shall be applied by substituting for the term "December 31, 1975" in subsection (b), the earlier of—

26 USC 501.

(1) the date on which the second convention of such labor organization held after the date of the enactment of this Act ends, or

(2) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subsection (c) be substituted.

PART 4—FIDUCIARY RESPONSIBILITY

COVERAGE

29 USC 1101.
83 STAT. 874
88 STAT. 875

SEC. 401. (a) This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)), other than—

(1) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; or

(2) any agreement described in section 736 of the Internal Revenue Code of 1954, which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest. 26 USC 736.

(b) For purposes of this part:

(1) In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, solely by reason of such investment, be deemed to include any assets of such investment company. 15 USC 80a-51.

(2) In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to include any assets of such insurer. For purposes of this paragraph:

(A) The term "insurer" means an insurance company, insurance service, or insurance organization, qualified to do business in a State. "Insurer."

(B) The term "guaranteed benefit policy" means an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account. "Guaranteed benefit policy."

ESTABLISHMENT OF PLAN

SEC. 402. (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan. 29 USC 1102.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly. "Named fiduciary."

(b) Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1)),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 405(c)(1), may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

ESTABLISHMENT OF TRUST

29 USC 1103.

SEC. 403. (a) Except as provided in subsection (b), all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 402(a) or appointed by a person who is a named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that—

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this title, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3).

(b) The requirements of subsection (a) of this section shall not apply—

(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

(3) to a plan—

(i) some or all of the participants of which are employees described in section 401(c)(1) of the Internal Revenue Code of 1954; or

26 USC 401.

(ii) which consists of one or more individual retirement accounts described in section 408 of the Internal Revenue Code of 1954, to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of such Code, whichever is applicable;

Post, p. 959.

(4) to a plan which the Secretary exempts from the requirement of subsection (a) and which is not subject to any of the following provisions of this Act—

(A) part 2 of this subtitle,

Ante, p. 852.

(B) part 3 of this subtitle, or

Ante, p. 868.

(C) title IV of this Act; or

Post, p. 1003.

(5) to a contract established and maintained under section 403(b) of the Internal Revenue Code of 1954 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of such Code.

Post, p. 986.

Post, p. 940.

(c)(1) Except as provided in paragraph (2) or (3) or subsection (d), or under section 4042 and 4044 (relating to termination of insured plans), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

Post, pp. 1021, 1025.

(2)(A) In the case of a contribution which is made by an employer by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution.

(B) If a contribution is conditioned on qualification of the plan under section 401, 403(a), or 405(a) of the Internal Revenue Code of 1954, and if the plan does not qualify, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the date of denial of qualification of the plan. 26 USC 401, 403, 405.

(C) If a contribution is conditioned upon the deductibility of the contribution under section 404 of the Internal Revenue Code of 1954, then, to the extent the deduction is disallowed, paragraph (1) shall not prohibit the return to the employer of such contribution (to the extent disallowed) within one year after the disallowance of the deduction. Post, p. 921.

(3) In the case of a contribution which would otherwise be an excess contribution (as defined in section 4972(b) of the Internal Revenue Code of 1954) paragraph (1) shall not prohibit a correcting distribution with respect to such contribution from the plan to the employer to the extent permitted in such section to avoid payment of an excise tax on excess contributions under such section. Post, p. 955.

(d)(1) Upon termination of a pension plan to which section 4021 does not apply at the time of termination and to which this part applies (other than a plan to which no employer contributions have been made) the assets of the plan shall be allocated in accordance with the provisions of section 4044 of this Act, except as otherwise provided in regulations of the Secretary. Post, p. 1025.

(2) The assets of a welfare plan which terminates shall be distributed in accordance with the terms of the plan, except as otherwise provided in regulations of the Secretary.

FIDUCIARY DUTIES

SEC. 404. (a)(1) Subject to sections 403 (c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and— 29 USC 1104. Ante, p. 876; Post, pp. 93, 197, 921, 1025.

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3)), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 407(d)(4) and (5)).

(b) Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises con-

trol over the assets in his account (as determined under regulations of the Secretary)—

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

LIABILITY FOR BREACH BY CO-FIDUCIARY

29 USC 1105.

SEC. 405. (a) In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b)(1) Except as otherwise provided in subsection (d) and in section 403(a) (1) and (2), if the assets of a plan are held by two or more trustees—

(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement, authorized by the trust instrument, allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) or any other provision of this part.

(3)(A) In the case of a plan the assets of which are held in more than one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 403(a)(1).

(c)(1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and (B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary

shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that—

(A) the named fiduciary violated section 404(a)(1)—

(i) with respect to such allocation or designation,

(ii) with respect to the establishment or implementation of the procedure under paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a).

(3) For purposes of this subsection, the term "trustee responsibility" means any responsibility provided in the plan's trust instrument (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 402(c)(3). "Trustee responsibility."

(d)(1) If an investment manager or managers have been appointed under section 402(c)(3), then, notwithstanding subsections (a) (2) and (3) and subsection (b), no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager. Liability.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee.

PROHIBITED TRANSACTIONS

SEC. 406. (a) Except as provided in section 408: 29 USC 1106.

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 407(a).

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a).

(b) A fiduciary with respect to a plan shall not—

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed

on the property within the 10-year period ending on the date of the transfer.

10 PERCENT LIMITATION WITH RESPECT TO ACQUISITION AND HOLDING OF EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CERTAIN PLANS

29 USC 1107.

SEC. 407. (a) Except as otherwise provided in this section and section 414:

(1) A plan may not acquire or hold—

(A) any employer security which is not a qualifying employer security, or

(B) any employer real property which is not qualifying employer real property.

(2) A plan may not acquire any qualifying employer security or qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

(3)(A) After December 31, 1984, a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984, exceeds 10 percent of the greater of—

(i) the fair market value of the assets of the plan, determined on December 31, 1984, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(B) Subparagraph (A) of this paragraph shall not apply to any plan which on any date after December 31, 1974; and before January 1, 1985, did not hold employer securities or employer real property (or both) the aggregate fair market value of which determined on such date exceeded 10 percent of the greater of

(i) the fair market value of the assets of the plan, determined on such date, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(4)(A) After December 31, 1979, a plan may not hold any employer securities or employer real property in excess of the amount specified in regulations under subparagraph (B). This subparagraph shall not apply to a plan after the earliest date after December 31, 1974, on which it complies with such regulations.

Regulations.

(B) Not later than December 31, 1976, the Secretary shall prescribe regulations which shall have the effect of requiring that a plan divest itself of 50 percent of the holdings of employer securities and employer real property which the plan would be required to divest before January 1, 1985, under paragraph (2) or subsection (c) (whichever is applicable).

(b)(1) Subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.

(2) CROSS REFERENCES.—

(A) For exemption from diversification requirements for holding of qualifying employer securities and qualifying employer real property by eligible individual account plans, see section 404(a)(2).

(B) For exemption from prohibited transactions for certain acquisitions of qualifying employer securities and qualifying employer real property which are not in violation of 10 percent limitation, see section 408(e).

(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 414(c).

(c)(1) A plan which makes the election, under paragraph (3) shall be treated as satisfying the requirement of subsection (a)(3) if and only if employer securities held on any date after December 31, 1974 and before January 1, 1985 have a fair market value, determined as of December 31, 1974, not in excess of 10 percent of the lesser of—

(A) the fair market value of the assets of the plan determined on such date (disregarding any portion of the fair market value of employer securities which is attributable to appreciation of such securities after December 31, 1974) but not less than the fair market value of plan assets on January 1, 1975, or

(B) an amount equal to the sum of (i) the total amount of the contributions to the plan received after December 31, 1974, and prior to such date, plus (ii) the fair market value of the assets of the plan, determined on January 1, 1975.

(2) For purposes of this subsection, in the case of an employer security held by a plan after January 1, 1975, the ownership of which is derived from ownership of employer securities held by the plan on January 1, 1975, or from the exercise of rights derived from such ownership, the value of such security held after January 1, 1975, shall be based on the value as of January 1, 1975, of the security from which ownership was derived. The Secretary shall prescribe regulations to carry out this paragraph.

(3) An election under this paragraph may not be made after December 31, 1975. Such an election shall be made in accordance with regulations prescribed by the Secretary, and shall be irrevocable. A plan may make an election under this paragraph only if on January 1, 1975, the plan holds no employer real property. After such election and before January 1, 1985 the plan may not acquire any employer real property.

(d) For purposes of this section— Definitions.

(1) The term "employer security" means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. A contract to which section 408(b)(5) applies shall not be treated as a security for purposes of this section.

(2) The term "employer real property" means real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this section, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

(3)(A) The term "eligible individual account plan" means an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on the date of enactment of this Act and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954. Post, p. 959.

(B) Notwithstanding subparagraph (A), a plan shall be treated as an eligible individual account plan with respect to the acquisition or holding of qualifying employer real property or qualifying employer securities only if such plan explicitly provides for acquisition and holding of qualifying employer securities or qualifying employer real property (as the case may be). In the case of a plan in existence on the date of enactment of this Act, this subparagraph shall not take effect until January 1, 1976.

(4) The term "qualifying employer real property" means parcels of employer real property—

(A) if a substantial number of the parcels are dispersed geographically;

(B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use;

(C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer); and

(D) if the acquisition and retention of such property comply with the provisions of this part (other than section 404 (a)(1)(B) to the extent it requires diversification, and sections 404(a)(1)(C), 406, and subsection (a) of this section).

(5) The term "qualifying employer security" means an employer security which is stock or a marketable obligation (as defined in subsection (e)).

(6) The term "employee stock ownership plan" means an individual account plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase both of which are qualified, under section 401 of the Internal Revenue Code of 1954, and which is designed to invest primarily in qualifying employee securities, and

26 USC 401.

(B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(7) A corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1954, except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided in regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary. Regulations under this paragraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

26 USC 1563.

Regulations.

(8) The Secretary may prescribe regulations specifying the extent to which conversions, splits, the exercise of rights, and similar transactions are not treated as acquisitions.

"Marketable obligation."

(e) For purposes of subsection (d)(5), the term "marketable obligation" means a bond, debenture, note, or certificate, or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and

Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

EXEMPTIONS FROM PROHIBITED TRANSACTIONS

SEC. 408. (a) The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a). Action under this subsection may be taken only after consultation and coordination with the Secretary of the Treasury. An exemption granted under this section shall not relieve a fiduciary from any other applicable provision of this Act. The Secretary may not grant an exemption under this subsection unless he finds that such exemption is— 29 USC 1108.

(1) administratively feasible,

(2) in the interests of the plan and of its participants and beneficiaries, and

(3) protective of the rights of participants and beneficiaries of such plan.

Before granting an exemption under this subsection from section 406 (a) or 407(a), the Secretary shall publish notice in the Federal Register of the pendency of the exemption, shall require that adequate notice be given to interested persons, and shall afford interested persons opportunity to present views. The Secretary may not grant an exemption under this subsection from section 406(b) unless he affords an opportunity for a hearing and makes a determination on the record with respect to the findings required by paragraphs (1), (2), and (3) of this subsection. Publication in Federal Register.

(b) The prohibitions provided in section 406 shall not apply to any of the following transactions: Nonapplicability.

(1) Any loans made by the plan to parties in interest who are participants or beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis, (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees, (C) are made in accordance with specific provisions regarding such loans set forth in the plan, (D) bear a reasonable rate of interest, and (E) are adequately secured.

(2) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

(3) A loan to an employee stock ownership plan (as defined in section 407(d)(6)), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at an interest rate which is not in excess of a reasonable rate.

If the plan gives collateral to a party in interest for such loan, such collateral may consist only of qualifying employer securities (as defined in section 407(d)(5)).

(4) The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment.

(5) Any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State, if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a party in interest which is wholly owned (directly or indirectly) by the employer maintaining the plan, or by any person which is a party in interest with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are parties in interest (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan).

(6) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans.

Such ancillary services shall not be provided at more than reasonable compensation.

(7) The exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion.

(8) Any transaction between a plan and (i) a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency or (ii) a pooled investment fund of an insurance company qualified to do business in a State, if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan.

(9) The making by a fiduciary of a distribution of the assets of the plan in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of this Act (relating to allocation of assets). Post, p. 1025.

(c) Nothing in section 406 shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan; except that no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such plan, except for reimbursement of expenses properly and actually incurred; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Section 407(b) and subsections (a), (b), (c), and (e) of this section shall not apply to any transaction in which a plan, directly or indirectly—

(1) lends any part of the corpus or income of the plan to;

(2) pays any compensation for personal services rendered to the plan to; or

(3) acquires for the plan any property from or sells any property to;

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1954), a member of the family (as defined in section 267(c)(4) of such Code) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of this subsection a shareholder employee (as defined in section 1379 of the Internal

26 USC 401.
26 USC 267.

26 USC 1379.

Revenue Code of 1954) and a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of the Internal Revenue Code of 1954) and an employer or association of employers which establishes such an account or annuity under section 408(c) of such code shall be deemed to be an owner-employee.

Post, pp. 959, 964.

(e) Sections 406 and 407 shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407 (d) (5)) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 407(d) (4))—

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under Section 407(e)(1)),

(2) if no commission is charged with respect thereto, and

(3) if—

(A) the plan is an eligible individual account plan (as defined in section 407(d)(3)), or

(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 407(a).

LIABILITY FOR BREACH OF FIDUCIARY DUTY

29 USC 1109.

SEC. 409. (a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

EXCULPATORY PROVISIONS; INSURANCE

29 USC 1110.

SEC. 410. (a) Except as provided in sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(b) Nothing in this subpart shall preclude—

(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING CERTAIN POSITIONS

SEC. 411. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), a violation of any provision of this Act, a violation of section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. 186), a violation of chapter 63 of title 18, United States Code, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve— 29 USC 1111. 21 USC 802. 18 USC 1341.

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or

(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this title. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.

(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both. Penalty.

(c) For the purposes of this section: Definitions.

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

88 STAT. 888

BONDING

29 USC 1112.

SEC. 412. (a) Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as "plan official") shall be bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, and

(2) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Secretary, which amount shall be at least $1,000,000. Paragraph (2) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation, only if such bank or institution meets bonding or similar requirements under State law which the Secretary determines are at least equivalent to those imposed on banks by Federal law.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000; subject to the 10 per centum limitation of the preceding sentence. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the plan official, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6, United States Code. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

Limitation.

(b) It shall be unlawful for any plan official to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any plan official of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section including exempting a plan from the requirements of this section where he finds that (1) other bonding arrangements or (2) the overall financial condition of the plan would be adequate to protect the interests of the beneficiaries and participants. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section. Regulations.

LIMITATION ON ACTIONS

SEC. 413. (a) No action may be commenced under this title with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of— 29 USC 1113.

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this title;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

EFFECTIVE DATE

SEC. 414. (a) Except as provided in subsections (b), (c), and (d), this part shall take effect on January 1, 1975. 29 USC 1114.

(b) (1) The provisions of this part authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act.

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 402, 403 (other than 403(c)), 405 (other than 405 (a) and (d)), and 410(a), as it applies to any plan in existence on the date of enactment of this Act if he determines such postponement is (A) necessary to amend the instrument establishing the plan under which the plan is maintained and (B) not adverse to the interest of participants and beneficiaries.

(3) This part shall take effect on the date of enactment of this Act with respect to a plan which terminates after June 30, 1974, and before January 1, 1975, and to which at the time of termination section 4021 applies. Post, p. 1014.

(c) Section 406 and 407(a) (relating to prohibited transactions) shall not apply—

(1) until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954 or the corresponding provisions of prior law);

26 USC 503.

(2) until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954) or the corresponding provisions of prior law;

(3) until June 30, 1984, to the sale, exchange, or other disposition of property described in paragraph (2) between a plan and a party in interest if—

(A) in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(4) Until June 30, 1977, to the provision of services, to which paragraphs (1), (2), and (3) do not apply between a plan and a party in interest—

(A) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or

(B) if the party in interest ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if such provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954) or the corresponding provisions of prior law; or.

(5) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a) (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideration.

(d) Any election, or failure to elect, by a disqualified person under section 2003(c)(1)(B) of this Act shall be treated for purposes of this part (but not for purposes of section 514) as an act or omission occurring before the effective date of this part.

Post, p. 971.

Part 5—Administration and Enforcement

CRIMINAL PENALTIES

Sec. 501. Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $100,000. 29 USC 1131. Ante, p. 840.

CIVIL ENFORCEMENT

Sec. 502. (a) A civil action may be brought— 29 USC 1132.

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c); Ante, p. 849.

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title; or

(6) by the Secretary to collect any civil penalty under subsection (i).

(b) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) with respct to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if— 26 USC 401, 403, 405. Ante, pp. 852, 868.

(1) requested by the Secretary of the Treasury, or

(2) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(c) Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this title to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the

date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(d)(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

Jurisdiction.

(e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) In any action under this title by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(h) A copy of the complaint in any action under this title by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

Ante, p. 874.

Penalty.

(i) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved (as defined in section 4975(f)(4) of the Internal Revenue Code of 1954); except that if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation, which regulations shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not

Post, p. 971.

apply to a transaction with respect to a plan described in section 4975 (e)(1) of such Code. Post, p. 974.

(j) In all civil actions under this title, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28, United States Code), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this Act, or to compel him to take action required under this title, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

CLAIMS PROCEDURE

SEC. 503. In accordance with regulations of the Secretary, every employee benefit plan shall— 29 USC 1133.

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

INVESTIGATIVE AUTHORITY

SEC. 504. (a) The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order thereunder— 29 USC 1134.

(1) to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this title, and

(2) to enter such places, inspect such books and records and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this title or any rule or regulation issued thereunder or if the entry is pursuant to an agreement with the plan.

The Secretary may make available to any person actually affected by any matter which is the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter which may be the subject of such investigation; except that any information obtained by the Secretary pursuant to section 6103(g) of the Internal Revenue Code of 1954 shall be made available only in accordance with regulations prescribed by the Secretary of the Treasury. Post, p. 941.

(b) The Secretary may not under the authority of this section require any plan to submit to the Secretary any books or records of the plan more than once in any 12 month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order thereunder. Books or records, accessability.

(c) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) are hereby made applicable (without regard to any limitation in such sections respect-

ing persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. To the extent he considers appropriate, the Secretary may delegate his investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

REGULATIONS

29 USC 1135. Post, p. 995; Ante, p. 850.

SEC. 505. Subject to title III and section 109, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this title. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 504(a) and (b)).

OTHER AGENCIES AND DEPARTMENTS

29 USC 1136.

SEC. 506. In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this title and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this title. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this title as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

ADMINISTRATION

29 USC 1137. 5 USC 551, 701.

SEC. 507. (a) Subchapter II of chapter 5, and chapter 7, of title 5, United States Code (relating to administrative procedure), shall be applicable to this title.

(b) Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) In addition to the number of positions authorized by subsection (a), the Secretary of Labor is authorized, without regard to any other provision of this section, to place 1 position in the Department of Labor in grade GS-18, and a total of 20 positions in the Department of Labor in grades GS-16 and 17."

(c) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this title or the Internal Revenue Code of 1954 with respect to any employee benefit plan under which he is a participant or beneficiary, any employee organization of which he is a member, or any employer organization in which he has an interest. This subsection does not apply to an employee benefit plan which covers only employees of the United States.

26 USC 1 et seq.

APPROPRIATIONS

SEC. 508. There are hereby authorized to be appropriated such sums as may be necessary to enable the Secretary to carry out his functions and duties under this Act. 29 USC 1138.

SEPARABILITY PROVISIONS

SEC. 509. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. 29 USC 1139.

INTERFERENCE WITH RIGHTS PROTECTED UNDER ACT

SEC. 510. It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this title, section 3001, or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this title, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this Act or the Welfare and Pension Plans Disclosure Act. The provisions of section 502 shall be applicable in the enforcement of this section. 29 USC 1140. Post, p. 995. 29 USC 301 note.

COERCIVE INTERFERENCE

SEC. 511. It shall be unlawful for any person through the use of fraud, force, violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce, or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, this title, section 3001, or the Welfare and Pension Plans Disclosure Act. Any person who willfully violates this section shall be fined $10,000 or imprisoned for not more than one year, or both. 29 USC 1141. Penalty.

ADVISORY COUNCIL

SEC. 512. (a)(1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter in this section referred to as the "Council") consisting of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be members of the same political party. Advisory Council on Employee Welfare and Pension Benefit Plans. Establishment. 29 USC 1142.

(2) Members shall be persons qualified to appraise the programs instituted under this Act.

(3) Of the members appointed, three shall be representatives of employee organizations (at least one of whom shall be representative of any organization members of which are participants in a multiemployer plan); three shall be representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); three representatives shall be appointed from the general public, one of whom shall be a person representing those receiving benefits from a pension plan; and there shall

be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

(4) Members shall serve for terms of three years except that of those first appointed, five shall be appointed for terms of one year, five shall be appointed for terms of two years, and five shall be appointed for terms of three years. A member may be reappointed. A member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present and voting.

(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four times each year and at such other times as the Secretary requests. In his annual report submitted pursuant to section 513(b), the Secretary shall include each recommendation which he has received from the Council during the preceding calendar year.

(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d)(1) Members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council.

5 USC 5332.

(2) While away from their homes or regular places of business in the performance of services for Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

86 Stat. 776.
5 USC app. 14.

(e) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

RESEARCH, STUDIES, AND ANNUAL REPORT

29 USC 1143.

SEC. 513. (a)(1) The Secretary is authorized to undertake research and surveys and in connection therewith to collect, compile, analyze and publish data, information, and statistics relating to employee benefit plans, including retirement, deferred compensation, and welfare plans, and types of plans not subject to this Act.

(2) The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (A) the effects of this title upon the provisions and costs of pension plans, (B) the role of private pensions in meeting the economic security needs of the Nation, and (C) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial and actuarial characteristics and practices, and methods of encouraging the growth of the private pension system.

(3) The Secretary may, as he deems appropriate or necessary, undertake other studies relating to employee benefit plans, the matters regulated by this title, and the enforcement procedures provided for under this title.

(4) The research, surveys, studies, and publications referred to in this subsection may be conducted directly, or indirectly through grant or contract arrangements.

(b) The Secretary shall submit annually a report to the Congress covering his administration of this title for the preceding year, and including (1) an explanation of any variances or extensions granted under section 110, 207, 303, or 304 and the projected date for terminating the variance; (2) the status of cases in enforcement status; (3) recommendations received from the Advisory Council during the preceding year; and (4) such information, data, research findings, studies, and recommendations for further legislation in connection with the matters covered by this title as he may find advisable.

Report to Congress.

Ante, pp. 851, 865, 872, 873.

(c) The Secretary is authorized and directed to cooperate with the Congress and its appropriate committees, subcommittees, and staff in supplying data and any other information, and personnel and services, required by the Congress in any study, examination, or report by the Congress relating to pension benefit plans established or maintained by States or their political subdivisions.

EFFECT ON OTHER LAWS

SEC. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

29 USC 1144.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(c) For purposes of this section:

"State law."

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

"State."

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

Ante, pp. 851, 894.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS

SEC. 1001. AMENDMENT OF INTERNAL REVENUE CODE OF 1954.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

68A Stat. 3. 26 USC 1 et seq.

Subtitle A—Participation, Vesting, Funding, Administration, Etc.

PART 1—PARTICIPATION, VESTING, AND FUNDING

SEC. 1011. MINIMUM PARTICIPATION STANDARDS.

26 USC 401.

Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus, plans, etc.) is amended by adding at the end thereof the following:

"Subpart B—Special Rules

"Sec. 410. Minimum participation standards.
"Sec. 411. Minimum vesting standards.
"Sec. 412. Minimum funding standards.
"Sec. 413. Collectively bargained plans.
"Sec. 414. Definitions and special rules.
"Sec. 415. Limitations on benefits and contributions under qualified plans.

"SEC. 410. MINIMUM PARTICIPATION STANDARDS.

"(a) PARTICIPATION.—

"(1) MINIMUM AGE AND SERVICE CONDITIONS.—

"(A) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

"(i) the date on which the employee attains the age of 25; or

"(ii) the date on which he completes 1 year of service.

"(B) SPECIAL RULES FOR CERTAIN PLANS.—

"(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting '3 years of service' for '1 year of service'.

Post, p. 901.

"(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii)) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of

26 USC 170.
26 USC 501.

subparagraph (A) shall be applied by substituting '30' for '25'. This clause shall not apply to any plan to which clause (i) applies.

"(2) MAXIMUM AGE CONDITIONS.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age, unless— 26 USC 401.

"(A) the plan is a—

"(i) defined benefit plan, or

"(ii) target benefit plan (as defined under regulations prescribed by the Secretary or his delegate), and

"(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

"(3) DEFINITION OF YEAR OF SERVICE.—

"(A) GENERAL RULE.—For purposes of this subsection, the term 'year of service' means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, under regulations prescribed by the Secretary of Labor, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

"(B) SEASONAL INDUSTRIES.—In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term 'year of service' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

"(C) HOURS OF SERVICE.—For purposes of this subsection, the term 'hour of service' means a time of service determined under regulations prescribed by the Secretary of Labor.

"(D) MARITIME INDUSTRIES.—For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out this subparagraph.

"(4) TIME OF PARTICIPATION.—A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

"(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

"(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

"(5) BREAKS IN SERVICE.—

"(A) GENERAL RULE.—Except as otherwise provided in subparagraphs (B), (C), and (D), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of paragraph (1).

"(B) EMPLOYEES UNDER 3-YEAR 100 PERCENT VESTING.—In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

Post, p. 901.

"(C) 1-YEAR BREAK IN SERVICE.—In computing an employee's period of service for purposes of subsection (a)(1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in paragraph (3)) after his return.

"(D) NONVESTED PARTICIPANTS.—In the case of a participant who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

"(b) ELIGIBILITY.—

"(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401(a) unless the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under section 401(a) which benefits either—

26 USC 401.

"(A) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation, or

"(B) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, or highly compensated.

"(2) EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of paragraph (1), there shall be excluded from consideration—

"(A) employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

"(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

45 USC 181.

"(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)). 26 USC 911.

Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight.

"(c) APPLICATION OF PARTICIPATION STANDARDS TO CERTAIN PLANS.—

"(1) The provisions of this section (other than paragraph (2) of this subsection) shall not apply to—

"(A) a governmental plan (within the meaning of section 414(d)),

"(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by subsection (d) of this section has not been made,

"(C) a plan which has not at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974 provided for employer contributions, and Ante, p. 829.

"(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) if no part of the contributions to or under such plan are made by employers of participants in such plan.

"(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the requirements of section 401(a)(3) as in effect on the day before the date of the enactment of this section.

"(d) ELECTION BY CHURCH TO HAVE PARTICIPATION, VESTING, FUNDING, ETC., PROVISIONS APPLY.—

"(1) IN GENERAL.—If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner as the Secretary or his delegate may by regulations prescribe), then the provisions of this title relating to participation, vesting, funding, etc. (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.

"(2) ELECTION IRREVOCABLE.—An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable."

SEC. 1012. MINIMUM VESTING STANDARDS.

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 410 the following new section: Ante, p. 898.

"SEC. 411. MINIMUM VESTING STANDARDS.

"(a) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in subsection (a)(8)) and in addition satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b).

"(1) EMPLOYEE CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

"(2) EMPLOYER CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

"(A) 10-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

"(B) 5- TO 15-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

"Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100.

"(C) RULE OF 45.—

"(i) A plan satisfies the requirements of this subparagraph if an employee who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

"If years of service equal or exceed—	and sum of age and service equals or exceeds—	then the nonforfeitable percentage is—
5	45	50
6	47	60
7	49	70
8	51	80
9	53	90
10	55	100.

"(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any employee who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

"(3) CERTAIN PERMITTED FORFEITURES, SUSPENSIONS, ETC.—For purposes of this subsection—

"(A) FORFEITURE ON ACCOUNT OF DEATH.—A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).

Post, p. 935.

"(B) SUSPENSION OF BENEFITS UPON REEMPLOYMENT OF RETIREE.—A right to an accrued benefit derived from employer

contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

"(i) in the case of a plan other than a multiemployer plan, by the employer who maintains the plan under which such benefits were being paid; and

"(ii) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term 'employed'. Regulations.

"(C) EFFECT OF RETROACTIVE PLAN AMENDMENTS.—A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(c)(8). Post, p. 914.

"(D) WITHDRAWAL OF MANDATORY CONTRIBUTION.—

"(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.

"(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan, the plan provision required under this clause may provide that such repayment must be made before the participant has any one-year break in service commencing after the withdrawal.

"(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of the Employee Retirement Income Security Act of 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant before the date of the enactment of the Act if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after the date of the enactment of such Act. The Secretary or Regulations. Ante, p. 829.

his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

"(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

"(v) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19).

"(4) SERVICE INCLUDED IN DETERMINATION OF NONFORFEITABLE PERCENTAGE.—In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

"(A) years of service before age 22, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;

"(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

"(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary or his delegate);

"(D) service not required to be taken into account under paragraph (6);

"(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970; and

"(F) years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date.

"(5) YEAR OF SERVICE.—

"(A) GENERAL RULE.—For purposes of this subsection, except as provided in subparagraph (C), the term 'year of service' means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.

"(B) HOURS OF SERVICE.—For purposes of this subsection, the term 'hours of service' has the meaning provided by section 410(a)(3)(C).

Ante, p. 898.

"(C) SEASONAL INDUSTRIES.—In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term 'year of service' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

Regulations.

"(D) MARITIME INDUSTRIES.—For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

"(6) BREAKS IN SERVICE.—

"(A) DEFINITION OF 1-YEAR BREAK IN SERVICE.—For purposes of this paragraph, the term '1-year break in service'

means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.

"(B) 1 YEAR OF SERVICE AFTER 1-YEAR BREAK IN SERVICE.—For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

"(C) 1-YEAR BREAK IN SERVICE UNDER DEFINED CONTRIBUTION PLAN.—For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has any 1-year break in service, years of service after such break shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such break.

"(D) NONVESTED PARTICIPANTS.—For purposes of paragraph (4), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

"(7) ACCRUED BENEFIT.—

"(A) IN GENERAL.—For purposes of this section, the term 'accrued benefit' means—

"(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

"(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

"(B) EFFECT OF CERTAIN DISTRIBUTIONS.—Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

"(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the Secretary or his delegate, or

"(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other

circumstances as may be provided under regulations prescribed by the Secretary or his delegate.

"(C) REPAYMENT OF SUBPARAGRAPH (b) DISTRIBUTIONS.—For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

"(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

"(ii) resumes employment covered under the plan, and

"(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has any one-year break in service commencing after such withdrawal.

"(8) NORMAL RETIREMENT AGE.—For purposes of this section, the term 'normal retirement age' means the earlier of—

"(A) the time a plan participant attains normal retirement age under the plan, or

"(B) the later of—

"(i) the time a plan participant attains age 65, or

"(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

"(9) NORMAL RETIREMENT BENEFIT.—For purposes of this section, the term 'normal retirement benefit' means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

"(A) medical benefits, and

"(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act become payable which—

42 USC 401.

"(i) do not exceed such social security benefits, and

"(ii) terminate when such social security benefits commence.

"(10) CHANGES IN VESTING SCHEDULE.—

"(A) GENERAL RULE.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfy-

ing the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

"(B) ELECTION OF FORMER SCHEDULE.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

"(b) ACCRUED BENEFIT REQUIREMENTS.—

(1) GENERAL RULES.—

"(A) 3-PERCENT METHOD.—A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

"(i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

"(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

"(B) 133⅓ PERCENT RULE.—A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

"(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

"(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

"(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

"(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

"(C) FRACTIONAL RULE.—A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

"(D) ACCRUAL FOR SERVICE BEFORE EFFECTIVE DATE.—Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

"(i) his accrued benefit determined under the plan, as in effect from time to time prior to the date of the enactment of the Employee Retirement Income Security Act of 1974, or

"(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

"(E) FIRST TWO YEARS OF SERVICE.—Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term 'years of service' has the meaning provided by section 410(a)(3)(A).

Ante, p. 898.

"(F) CERTAIN INSURED DEFINED BENEFIT PLANS.—Notwithstanding subparagraphs (A), (B), and (C), a defined benefit

plan satisfies the requirements of this paragraph if such plan—

"(i) is funded exclusively by the purchase of insurance contracts, and

"(ii) satisfies the requirements of paragraphs (2) and (3) of section 412(i) (relating to certain insurance contract plans), Post, p. 914.

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 412(i) were satisfied.

"(G) ACCRUED BENEFIT MAY NOT DECREASE ON ACCOUNT OF INCREASING AGE OR SERVICE.—Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act which benefits under the plan— 42 USC 401.

"(i) do not exceed such social security benefits, and

"(ii) terminate when such social security benefits commence.

"(2) SEPARATE ACCOUNTING REQUIRED IN CERTAIN CASES.—A plan satisfies the requirements of this paragraph if—

"(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

"(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

"(3) YEAR OF PARTICIPATION.—

"(A) DEFINITION.—For purposes of determining an employee's accrued benefit, the term 'year of participation' means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5)) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis. Ante, p. 898.

"(B) LESS THAN FULL TIME SERVICE.—For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

"(C) LESS THAN 1,000 HOURS OF SERVICE DURING YEAR.—For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.

"(D) SEASONAL INDUSTRIES.—In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term 'year of participation' shall be such period as determined under regulations prescribed by the Secretary of Labor.

"(E) MARITIME INDUSTRIES.—For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

Regulations.

"(c) ALLOCATION OF ACCRUED BENEFITS BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS.—

"(1) ACCRUED BENEFIT DERIVED FROM EMPLOYER CONTRIBUTIONS.—For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date is the excess, if any, of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

"(2) ACCRUED BENEFIT DERIVED FROM EMPLOYEE CONTRIBUTIONS.—

"(A) PLANS OTHER THAN DEFINED BENEFIT PLANS.—In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

"(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

"(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

"(B) DEFINED BENEFIT PLANS.—

"(i) IN GENERAL.—In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

"(ii) APPROPRIATE CONVERSION FACTOR.—For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

"(C) DEFINITION OF ACCUMULATED CONTRIBUTIONS.—For purposes of this subsection, the term 'accumulated contributions' means the total of—

"(i) all mandatory contributions made by the employee,

"(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which subsection (a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term 'mandatory contributions' means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. "Mandatory contributions."

"(D) ADJUSTMENTS.—The Secretary or his delegate is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary or his delegate determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

"(E) LIMITATION.—The accrued benefit derived from employee contributions shall not exceed the greater of—

"(i) the employee's accrued benefit under the plan, or

"(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.

"(3) ACTUARIAL ADJUSTMENT.—For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

"(d) SPECIAL RULES.—

"(1) COORDINATION WITH SECTION 401(a)(4).—A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) unless— Post, p. 938.

"(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are officers, shareholders, or highly compensated, or

"(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders, or highly compensated.

"(2) PROHIBITED DISCRIMINATION.—Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401(a)(4).

Post, p. 938.

"(3) TERMINATION OR PARTIAL TERMINATION; DISCONTINUANCE OF CONTRIBUTIONS.—Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401 (a) unless the plan of which such trust is a part provides that—

"(A) upon its termination or partial termination, or

Post, p. 914.

"(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401(a)(4), may not be used for designated employees in the event of early termination of the plan.

"(4) CLASS YEAR PLANS.—The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this section, the term 'class year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

"(5) TREATMENT OF VOLUNTARY EMPLOYEE CONTRIBUTIONS.—In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

"(6) ACCRUED BENEFIT NOT TO BE DECREASED BY AMENDMENT.—A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8).

"(e) APPLICATION OF VESTING STANDARDS TO CERTAIN PLANS.—

"(1) The provisions of this section (other than paragraph (2)) shall not apply to—

"(A) a governmental plan (within the meaning of section 414(d)),

Post, p. 925.

"(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

Ante, p. 898.

"(C) a plan which has not, at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974, provided for employer contributions, and Ante, p. 829.

"(D) a plan established and maintained by a society, order, or association described in section 501(c) (8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan. 26 USC 501.

"(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on the day before the date of the enactment of the Employee Retirement Income Security Act of 1974." Post, p. 938.

(b) Comparability of Plans.—Section 401(a) (relating to requirements for qualification) is amended by adding at the end of paragraph (5) the following: "For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate. For the purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his delegate to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates."

(c) Variations From Certain Vesting and Accrued Benefits Requirements.—In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of the enactment of this Act, the plan administrator petitions the Secretary of Labor, the Secretary of Labor may prescribe an alternate method which shall be treated as satisfying the requirements of subsection (a)(2) of section 411 of the Internal Revenue Code of 1954, or of subsection (b)(1) (other than subparagraph (D) thereof) of such section 411, or of both such provisions for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that— 26 USC 411 note. Ante, p. 901.

(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 412(d) or (e) would be inadequate. Post, p. 914.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the plan administrator petitions the Secretary of Labor for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.

SEC. 1013. MINIMUM FUNDING STANDARDS.

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 411 the following new section:

Ante, p. 901.

"SEC. 412. MINIMUM FUNDING STANDARDS.

"(a) GENERAL RULE.—Except as provided in subsection (h), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

"(1) such plan included a trust which qualified (or was determined by the Secretary or his delegate to have qualified) under section 401(a), or

26 USC 401.

"(2) such plan satisfied (or was determined by the Secretary or his delegate to have satisfied) the requirements of section 403 (a) or 405(a).

Post, pp. 969, 991.

A plan to which this section applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year, the plan does not have an accumulated funding deficiency. For purposes of this section and section 4971, the term 'accumulated funding deficiency' means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

26 USC 405.

"Accumulated funding deficiency."

Post, p. 920.

"(b) FUNDING STANDARD ACCOUNT.—

"(1) ACCOUNT REQUIRED.—Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

"(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

"(A) the normal cost of the plan for the plan year,

"(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

"(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

"(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

"(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

"(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

"(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,

"(C) the amount necessary to amortize each waived funding deficiency (within the meaning of subsection (d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, and

"(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D).

"(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

"(A) the amount considered contributed by the employer to or under the plan for the plan year,

"(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

"(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

"(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

"(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,

"(C) the amount of the waived funding deficiency (within the meaning of subsection (d)(3) for the plan year, and

"(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

"(4) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary or his delegate, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

"(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

"(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

"(5) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary or his delegate) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(c) SPECIAL RULES.—

"(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

"(2) VALUATION OF ASSETS.—

"(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary or his delegate.

"(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary or his delegate shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary or his delegate.

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

"(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

42 USC 1305.

"(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

26 USC 3121.

"(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

26 USC 401.

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

"(5) CHANGE IN FUNDING METHOD OR IN PLAN YEAR REQUIRES APPROVAL.—If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary or his delegate. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary or his delegate.

"(6) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (g)) in excess of the full funding limitation—

"(A) the funding standard account shall be credited with the amount of such excess, and

"(B) all amounts described in paragraphs (2) (B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

"(7) FULL FUNDING LIMITATION.—For purposes of paragraph

(6), the term 'full funding limitation' means the excess (if any) of—

"(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).

"(8) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

"(A) is adopted after the close of such plan year but no later than 2 and one-half months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

"(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

"(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of Labor notifying him of such amendment and the Secretary of Labor has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of Labor unless he determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (d)(2)) and that a waiver under subsection (d)(1) is unavailable or inadequate.

Notification of amendment.

Approval.

"(9) 3-YEAR VALUATION.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary or his delegate.

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary or his delegate.

"(d) VARIANCE FROM MINIMUM FUNDING STANDARD.—

"(1) WAIVER IN CASE OF SUBSTANTIAL BUSINESS HARDSHIP.—If a employer or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan, are unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary or his delegate may waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under subsection (b)(2)(C). The Secretary or his delegate shall not waive the mini-

mum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

"(2) DETERMINATION OF SUBSTANTIAL BUSINESS HARDSHIP.—For purposes of this section, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether or not—

"(A) the employer is operating at an economic loss,

"(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

"(C) the sales and profits of the industry concerned are depressed or declining, and

"(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

"(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section, the term 'waived funding deficiency' means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C)) for a plan year waived by the Secretary or his delegate and not satisfied by employer contributions.

"(e) EXTENSION OF AMORTIZATION PERIODS.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any plan may be extended by the Secretary of Labor for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

Ante, p. 829.

"(1) result in—

"(A) a substantial risk to the voluntary continuation of the plan, or

"(B) a substantial curtailment of pension benefit levels or employee compensation, and

"(2) be adverse to the interests of plan participants in the aggregate.

"(f) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—

"(1) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under subsection (d)(1) or an extension of time under subsection (e) is in effect with respect to the plan, or if a plan amendment described in subsection (c)(8) has been made at any time in the preceding 12 months (24 months for multiemployer plans). If a plan is amended in violation of the preceding sentence, any such waiver or extension of time shall not apply to any plan year ending on or after the date on which such amendment is adopted.

"(2) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

"(A) the Secretary of Labor determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

"(B) only repeals an amendment described in subsection (c)(8), or

"(C) is required as a condition of qualification under this part.

"(g) ALTERNATIVE MINIMUM FUNDING STANDARD.—

"(1) IN GENERAL.—A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this subsection.

"(2) CHARGES AND CREDITS TO ACCOUNT.—For a plan year the alternative minimum funding standard account shall be—

"(A) charged with the sum of—

"(i) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

"(ii) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

"(iii) an amount equal to the excess (if any) of credits to the alternative minimum standard account for all prior plan years over charges to such account for all such years, and

"(B) credited with the amount considered contributed by the employer to or under the plan for the plan year.

"(3) SPECIAL RULES.—The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under subsection (b)(5) with respect to the funding standard account.

"(h) EXCEPTIONS.—This section shall not apply to—

"(1) any profit-sharing or stock bonus plan,

"(2) any insurance contract plan described in subsection (i),

"(3) any governmental plan (within the meaning of section 414(d)), Post, p. 925.

"(4) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made, Ante, p. 898.

"(5) any plan which has not, at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974, provided for employer contributions, or Ante, p. 829.

"(6) any plan established and maintained by a society, order, or association described in section 501(c) (8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan. 26 USC 501.

No plan described in paragraph (3), (4), or (6) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on the day before the date of the enactment of the Employee Retirement Income Security Act of 1974.

"(i) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this subsection if—

"(1) the plan is funded exclusively by the purchase of individual insurance contracts,

"(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

"(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

"(4) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

"(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

"(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary or his delegate to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection."

(b) EXCISE TAX ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

26 USC 4041, 4940.

"CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

"Sec. 4971. Taxes on failure to meet minimum funding standards.

"SEC. 4971. TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

"(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 5 percent on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year. The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

Ante, p. 914.

"(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected. The tax imposed by this subsection shall be paid by the employer described in subsection (a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given to such term by the last sentence of section 412(a).

"(2) CORRECT.—The term 'correct' means, with respect to an accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

"(3) CORRECTION PERIOD.—The term 'correction period' means, with respect to an accumulated funding deficiency, the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b), extended—

26 USC 6212.

"(A) by any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) by any other period which the Secretary or his delegate determines is reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero under this section.

"(d) NOTIFICATION OF THE SECRETARY OF LABOR.—Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary or his delegate shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—

"(1) to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency, or

"(2) to comment on the imposition of such tax.

"(e) CROSS REFERENCES.—

"For disallowance of deduction for taxes paid under this section, see section 275.

"For liability for tax in case of an employer party to collective bargaining agreement, see section 413(b)(6).

"For provisions concerning notification of Secretary of Labor of imposition of tax under this section, waiver of the tax imposed by subsection (b), and other coordination between Secretary of the Treasury and Secretary of Labor with respect to compliance with this section, see section 3002(b) of title III of the Employee Retirement Income Security Act of 1974.".

(c) AMENDMENTS TO SECTION 404.—

(1) Paragraph (1) of section 404(a) (relating to deduction for employer contributions to pension trusts) is amended to read as follows: 26 USC 404.

"(1) PENSION TRUSTS.

"(A) IN GENERAL.—In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows:

"(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan), Ante, p. 914.

"(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years.

"(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary or his delegate.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under

Ante, p. 914.

section 412, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 412.

"(B) SPECIAL RULE IN CASE OF CERTAIN AMENDMENTS.—In the case of a plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary or his delegate), if the full funding limitation determined under section 412(c)(7) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 412(c)(7)(B) exceeds the amount determined under section 412(c)(7)(A), and if the funding method and the actuarial assumptions used are those used for such year under section 412, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

"(i) the full funding limitation for such year determined by applying section 412(c)(7) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

"(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary or his delegate to carry out the purposes of this subparagraph.

"(C) CERTAIN COLLECTIVELY-BARGAINED PLANS.—In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 167(l)(3)(A)(iii), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words 'plan amendment' the words 'plan amendment or increase in benefits payable under title II of the Social Security Act'. For purposes of this subparagraph, the term 'controlled group' has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).

26 USC 167.

42 USC 401.

"Controlled group."

26 USC 1563.

"(D) CARRYOVER.—Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations."

(2) Paragraph (6) of section 404(a) (relating to taxpayers on accrual basis) is amended to read as follows: 26 USC 404.

"(6) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)."

(3) Paragraph (7) of section 404(a) (relating to limit on deductions) is amended to read as follows: Supra.

"(7) LIMIT ON DEDUCTIONS.—If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year). In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust or a trust and an annuity plan." Ante, p. 914.

(d) ALTERNATIVE AMORTIZATION METHOD FOR CERTAIN MULTIEMPLOYER PLANS.— 26 USC 412 note.

(1) GENERAL RULE.—In the case of any multiemployer plan (as defined in section 414(f) of the Internal Revenue Code of 1954) to which section 412 of such Code applies, if— Post, p. 925.

(A) on January 1, 1974, the contributions under the plan were based on a percentage of pay, Ante, p. 914.

(B) the actuarial assumptions with respect to pay are reasonably related to past and projected experience, and

(C) the rates of interest under the plan are determined on the basis of reasonable actuarial assumptions,

the plan may elect (in such manner and at such time as may be provided under regulations prescribed by the Secretary of the Treasury or his delegate) to fund the unfunded past service liability under the plan existing as of the date 12 months following the first date on which such section 412 first applies to the plan by charging the funding standard account with an equal annual percentage of the aggregate pay of all participants in the plan in lieu of the level dollar charges to such account required under clauses (i), (ii), and (iii) of section 412(b)(2)(B) of such Code and section 302(b)(2)(B)(i), (ii), and (iii) of this Act.

(2) LIMITATION.—In the case of a plan which makes an election under paragraph (1), the aggregate of the charges required under such paragraph for a plan year shall not be less than the interest

on the unfunded past service liabilities described in clauses (i), (ii), and (iii) of section 412(b)(2)(B) of the Internal Revenue Code of 1954.

Ante, p. 914.

SEC. 1014. COLLECTIVELY BARGAINED PLANS, ETC.

Subpart B of part I of subchapter D of chapter 1 (relating to special rules) is amended by inserting after section 412 the following new section:

"SEC. 413. COLLECTIVELY BARGAINED PLANS, ETC.

"(a) APPLICATION OF SUBSECTION (b).—Subsection (b) applies to—

"(1) a plan maintained pursuant to an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

"(2) each trust which is a part of such plan.

"(b) GENERAL RULE.—If this subsection applies to a plan, notwithstanding any other provision of this title—

Ante, p. 898.

"(1) PARTICIPATION.—Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

Post, p. 938; Ante, p. 901.

"(2) DISCRIMINATION, ETC.—Sections 401(a)(4) and 411(d)(3) shall be applied as if all participants who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement were employed by a single employer.

"(3) EXCLUSIVE BENEFIT.—For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

"(4) VESTING.—Section 411 (other than subsection (d)(3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

"(5) FUNDING.—The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

Ante, p. 920.

"(6) LIABILITY FOR FUNDING TAX.—For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate--

"(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

"(B) then on the basis of their respective liabilities for contributions under the plan.

26 USC 404.

"(7) DEDUCTION LIMITATIONS.—Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section

404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate. 26 USC 404.

"(8) EMPLOYEES OF LABOR UNIONS.—For purposes of this subsection, employees of employee representatives shall be treated as employees of an employer described in subsection (a)(1) if such representatives meet the requirements of sections 401(a)(4) and 410 with respect to such employees. Post, p. 938; Ante, p. 898.

"(c) PLANS MAINTAINED BY MORE THAN ONE EMPLOYER.—In the case of a plan maintained by more than one employer—

"(1) PARTICIPATION.—Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer.

"(2) EXCLUSIVE BENEFIT.—For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees.

"(3) VESTING.—Section 411 shall be applied as if all employers who maintain the plan constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor. Ante, p. 901.

"(4) FUNDING.—The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer. Ante, p. 914.

"(5) LIABILITY FOR FUNDING TAX.—For a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate— Ante, p. 920.

"(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

"(B) then on the basis of their respective liabilities for contributions under the plan.

"(6) DEDUCTION LIMITATIONS.—Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

Allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this purpose by the Secretary or his delegate."

SEC. 1015. DEFINITIONS AND SPECIAL RULES.

Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 413 the following new section: Ante, p. 924.

"SEC. 414. DEFINITIONS AND SPECIAL RULES.

"(a) SERVICE FOR PREDECESSOR EMPLOYER.—For purposes of this part—

"(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

"(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary or his delegate, be treated as service for the employer.

"(b) EMPLOYEES OF CONTROLLED GROUP OF CORPORATIONS.—For purposes of sections 401, 410, 411, and 415, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 412, the tax imposed by section 4971, and the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary or his delegate.

26 USC 401.
Ante, pp. 898, 901;
Post, p. 979.
26 USC 1563.
Ante, p. 920.

"(c) EMPLOYEES OF PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—For purposes of sections 401, 410, 411, and 415, under regulations prescribed by the Secretary or his delegate, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

"(d) GOVERNMENTAL PLAN.—For purposes of this part, the term 'governmental plan' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term 'governmental plan' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669).

22 USC 288 note.

"(e) CHURCH PLAN.—

"(1) IN GENERAL.—For purposes of this part the term 'church plan' means—

"(A) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501, or

26 USC 501.

"(B) a plan described in paragraph (3).

"(2) CERTAIN UNRELATED BUSINESS OR MULTIEMPLOYER PLANS.—The term 'church plan' does not include a plan—

"(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513), or

"(B) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501.

"(3) SPECIAL TEMPORARY RULE FOR CERTAIN CHURCH AGENCIES UNDER CHURCH PLAN.—

"(A) Notwithstanding the provisions of paragraph (2)(B), a plan in existence on January 1, 1974, shall be

treated as a church plan if it is established and maintained by a church or convention or association of churches and one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501. 26 USC 501.

"(B) Subparagraph (A) shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974.

"(C) Subparagraph (A) shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

"(f) MULITIEMPLOYER PLAN.—

"(1) IN GENERAL.—For purposes of this part, the term 'multiemployer plan' means a plan—

"(A) to which more than one employer is required to contribute,

"(B) which is maintained pursuant to a collective-bargaining agreement between employee representatives and more than one employer,

"(C) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions,

"(D) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

"(E) which satisfies such other requirements as the Secretary of Labor may by regulations prescribe.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) If a plan is a multiemployer plan within the meaning of paragraph (1) for any plan year, subparagraph (C) of paragraph (1) shall be applied by substituting '75 percent' for '50 percent' for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions.

"(B) All corporations which are members of a controlled group of corporations (within the meaning of section 1563 (a), determined without regard to section 1563(e)(3)(C)) shall be deemed to be one employer. 26 USC 1563.

"(g) PLAN ADMINISTRATOR.—For purposes of this part, the term 'plan administrator' means—

"(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

"(2) in the absence of a designation referred to in paragraph (1)—

"(A) in the case of a plan maintained by a single employer, such employer,

"(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or

more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

"(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary or his delegate may by regulation, prescribe.

"(h) TAX TREATMENT OF CERTAIN CONTRIBUTIONS.—

"(1) IN GENERAL.—Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

26 USC 401.
26 USC 403, 405.

"(A) to an employees' trust described in section 401(a), or

"(B) under a plan described in section 403(a) or 405(a),

shall not be treated as having been made by the employer if it is designated as an employee contribution.

"(2) DESIGNATION BY UNITS OF GOVERNMENT.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

"(i) DEFINED CONTRIBUTION PLAN.—For purposes of this part, the term 'defined contribution plan' means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

"(j) DEFINED BENEFIT PLAN.—For purposes of this part, the term 'defined benefit plan' means any plan which is not a defined contribution plan.

"(k) CERTAIN PLANS.—A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—

Ante, p. 898.

"(1) for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan,

Ante, p. 901.
Post, p. 979.

"(2) for purposes of sections 411(a)(7)(A) (relating to minimum vesting standards) and 415 (relating to limitations on benefits and contributions under qualified plans), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and

Post, p. 971.

"(3) for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.

"(l) MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) or 405 unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph

Ante, p. 829.

shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation."

SEC. 1016. CONFORMING AND CLERICAL AMENDMENTS.

(a) CONFORMING AMENDMENTS.—

(1) Section 275(a) (relating to denial of deduction for certain taxes) is amended by adding at the end thereof the following new paragraph: 26 USC 275.

"(6) Taxes imposed by chapter 42 and chapter 43." 26 USC 4940.

(2) Section 401(a) (relating to requirements for qualification) is amended— Ante, p. 920.

(A) by striking out paragraph (3) and inserting in lieu thereof:

"(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and", Ante, p. 898.

(B) by striking out "paragraph (3)(B) or (4)" in paragraph (5) and inserting in lieu thereof "paragraph (4) or section 410(b) (without regard to paragraph (1)(A) thereof)", and

(C) by striking out paragraph (7) and inserting in lieu thereof:

"(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards)." Ante, p. 901.

(3) Section 404(a)(2) (relating to deduction for contributions of an employer to an employee's annuity plan) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)". 26 USC 404.

(4) Section 406(b)(1) (relating to certain employees of foreign subsidiaries) is amended by striking out "paragraphs (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)". Post, p. 938.

(5) Section 407(b)(1) (relating to certain employees of domestic subsidiaries engaged in business outside the United States) is amended by striking out "paragraph (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)".

(6) Section 805(d)(1)(C) (relating to definition of pension plan reserves) is amended by striking out "and (8)" and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)".

(7) Section 6161(b)(1) (relating to extensions of time for paying tax) is amended by striking out "or 42" and inserting in lieu thereof "42 or 43". The second sentence of section 6161(b) is amended by striking out "or 42" and inserting in lieu thereof ", 42, or chapter 43". 26 USC 6161.

(8) Section 6201(d) (relating to assessment authority) is amended by striking out "and chapter 42" and inserting in lieu thereof ", chapter 42, and chapter 43".

(9) Section 6211 (defining deficiency) is amended—

(A) by striking out so much of subsection (a) as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"(a) IN GENERAL.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 42 and 43, the term 'deficiency' means the amount 26 USC 1, 2001.

26 USC 1, 2001, 4940.

by which the tax imposed by subtitle A or B, or chapter 42 or 43, exceeds the excess of—"; and

Ante, p. 920.

(B) by striking out "chapter 42" in subsection (b)(2) and inserting in lieu thereof "chapter 42 or 43".

26 USC 6212.

(10) Section 6212 (relating to notice of deficiency) is amended—

(A) by striking out "chapter 42" in subsection (a) and inserting in lieu thereof "chapter 42 or 43",

(B) by striking out "or chapter 42" in subsection (b)(1) and inserting in lieu thereof "chapter 42, or chapter 43",

(C) by striking out "chapter 42, and this chapter" in subsection (b)(1) and inserting in lieu thereof "chapter 42, chapter 43, and this chapter", and

(D) by striking out "of the same decedent," in subsection (c) and inserting in lieu thereof "of the same decedent, of chapter 43 tax for the same taxable years,".

(11) Section 6213 (relating to restrictions applicable to deficiencies and petition to Tax Court) is amended—

(A) by striking out "or chapter 42" in subsection (a) and inserting in lieu thereof ", chapter 42 or 43",

(B) by striking out the heading of subsection (e) and inserting in lieu thereof:

"(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXCISE TAXES.—",

(C) by striking out "or 4945 (relating to taxes on taxable expenditures)" in subsection (e) and inserting in lieu thereof "4945 (relating to taxes on taxable expenditures), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions)"; and

Ante, p. 920.

Post, p. 971.

(D) by striking out "or 4945(h)(2)" in subsection (e) and inserting in lieu thereof ", 4945(i)(2), 4971(c)(3), or 4975(f)(4),".

(12) Section 6214 (relating to determinations by Tax Court) is amended—

(A) by amending the heading of subsection (c) to read as follows:

"(c) TAXES IMPOSED BY SECTION 507 OR CHAPTER 42 OR 43.—",

(B) by inserting after "chapter 42" each place it appears in subsection (c) "or 43"; and

(C) by striking out "chapter 42" in subsection (d) and inserting in lieu thereof "chapter 42 or 43".

(13) Section 6344(a)(1) (relating to cross references) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(14) Section 6501(e)(3) (relating to limitations on assessment and collection) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(15) Section 6503 (relating to suspension of running of period of limitations) is amended—

(A) by striking out "chapter 42 taxes)" in subsection (a)(1) and inserting in lieu thereof "certain excise taxes)", and

(B) by inserting after "section 507" in subsection (h) "or section 4971 or section 4975", and by striking out "or 4945(h)(2)" in subsection (h) and inserting in lieu thereof "4945(i)(2), 4971(c)(3), or 4975(f)(4)".

(16) Section 6512 (relating to limitations in case of petition to Tax Court) is amended by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 43".

(17) Section 6601(d) (relating to interest on underpayment,

nonpayment, or extensions of time for payment of tax) is amended by—

(A) striking out in the heading thereof "CHAPTER 42" and inserting in lieu thereof "CHAPTER 42 OR 43", and 26 USC 4940.

(B) striking out "chapter 42" and inserting in lieu thereof "certain excise". Ante, p. 920.

(18) Section 6653(c)(1) (relating to income, estate, gift, and chapter 42 taxes) is amended by striking out "chapter 42" each place it appears therein (including the heading) and inserting in lieu thereof "certain excise". 26 USC 6653.

(19) Section 6659(b) (relating to applicable rules) is amended by striking out "chapter 42" and inserting in lieu thereof "certain excise".

(20) Section 6676(b) (relating to failure to supply identifying numbers) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(21) Section 6677(b) (relating to failure to file information returns with respect to certain foreign trusts) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(22) Section 6679(b) (relating to failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(23) Section 6682(b) (relating to false information with respect to withholding allowances based on itemized deductions) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(24) The heading of section 6861 (relating to jeopardy assessments of income, estate, and gift taxes) is amended by striking out "and gift taxes.", and inserting in lieu thereof ", gift, and certain excise taxes.".

(25) Section 6862 (relating to jeopardy assessment of taxes other than income, estate, and gift taxes) is amended—

(A) by striking out "and Gift Taxes.", in the heading and inserting in lieu thereof ", Gift, and Certain Excise Taxes.",

(B) by striking out "and gift tax)" in subsection (a) and inserting in lieu thereof "gift tax, and certain excise taxes)".

(26) Section 7422 (relating to civil actions for refund) is amended—

(A) by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43" in subsection (e),

(B) by striking out "CHAPTER 42" in the heading of subsection (g) and inserting in lieu thereof "CHAPTER 42 or 43",

(C) by striking out "or 4945" in subsection (g)(1) and inserting in lieu thereof "4945, 4971, or 4975", 26 USC 4945.

(D) by striking out "section 4945(a) (relating to initial taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(a) (relating to initial taxes on taxable expenditures), 4971(a) (relating to initial tax on failure to meet minimum funding standard), 4975(a) (relating to initial tax on prohibited transactions)", Ante, p. 920; Post, p. 971.

(E) by striking out "or section 4945(b) (relating to additional taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(b) (relating to additional taxes on taxable expenditures), section 4971(b) (relating to additional tax on failure to meet minimum fund-

ing standard), or section 4975(b) (relating to additional tax on prohibited transactions)", and

(F) by striking out "or 4945" in paragraphs (2) and (3) of subsection (g) and inserting in lieu thereof "4945, 4971, or 4975".

26 USC 4945.

Ante, p. 920; Post, p. 971.

(27) Section 6204(b) (relating to supplemental assessments) is amended by striking out "and gift taxes" and inserting in lieu thereof "gift, and certain excise taxes".

(b) CLERICAL AMENDMENTS.—

(1) Part I of subchapter D of chapter 1 is amended by inserting after the heading and before the table of sections the following:

"Subpart A. General rule.
"Subpart B. Special rules.

"Subpart A—General Rule".

(2) The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"CHAPTER 43. Qualified pension, etc., plans."

(3) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to the section captioned "Assessable penalties with respect to information required to be furnished under section 7654" and inserting in lieu thereof:

"Sec. 6688. Assessable penalties with respect to information required to be furnished under section 7654."

(4) Subchapter B of chapter 68 is amended by striking out the heading of the section immediately preceding section 6689 and inserting in lieu thereof:

"SEC. 6688. ASSESSABLE PENALTIES WITH RESPECT TO INFORMATION REQUIRED TO BE FURNISHED UNDER SECTION 7654."

(5) The table of sections for part II of subchapter A of chapter 70 is amended by striking out "and gift taxes" in the items relating to sections 6861 and 6862 and inserting in lieu thereof "gift, and certain excise taxes".

26 USC 410 note.

SEC. 1017. EFFECTIVE DATES AND TRANSITIONAL RULES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part shall apply for plan years beginning after the date of the enactment of this Act.

(b) EXISTING PLANS.—Except as otherwise provided in subsections (c) through (h), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply for plan years beginning after December 31, 1975.

(c) EXISTING PLANS UNDER COLLECTIVE BARGAINING AGREEMENTS.—

(1) APPLICATION OF VESTING RULES TO CERTAIN PLAN PROVISIONS.—

(A) WAIVER OF APPLICATION.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, during the special temporary waiver period the plan shall not be treated as not meeting the requirements of section 411(b) (1) or (2) of the Internal Revenue Code of

1954 solely by reason of a supplementary or special plan provision (within the meaning of subparagraph (D)). Ante, p. 901.

(B) SPECIAL TEMPORARY WAIVER PERIOD.—For purposes of this paragraph, the term "special temporary waiver period" means plan years beginning after December 31, 1975, and before the earlier of—

(i) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) January 1, 1981.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act shall not be treated as a termination of such collective bargaining agreement.

(C) DETERMINATION BY SECRETARY OF LABOR REQUIRED.—Subparagraph (A) shall not apply unless the Secretary of Labor determines that the participation and vesting rules in effect on the date of the enactment of this Act are not less favorable to the employees, in the aggregate, than the rules provided under sections 410 and 411 of the Internal Revenue Code of 1954. Ante, pp. 898, 901.

(D) SUPPLEMENTARY OR SPECIAL PLAN PROVISIONS.—For purposes of this paragraph, the term "supplementary or special plan provision" means any plan provision which—

(i) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

(ii) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(2) APPLICATION OF FUNDING RULES.—

(A) IN GENERAL.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, section 412 of the Internal Revenue Code of 1954, and other amendments made by this part to the extent such amendments relate to such section 412, shall not apply during the special temporary waiver period (as defined in paragraph (1)(B)). Ante, p. 914.

(B) WAIVER OF UNDERFUNDING.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, if by reason of subparagraph (A) the requirements of section 401(a)(7) of the Internal Revenue Code of 1954 apply without regard to the amendment of such section 401(a)(7) by section 1016(a)(2)(C) of this Act, the plan shall not be treated as not meeting such requirements solely by reason of the application of the amendments made by sections 1011 and 1012 of this Act or related amendments made by this part. 26 USC 401. 26 USC 1016.

(C) LABOR ORGANIZATION CONVENTIONS.—In the case of a plan maintained by a labor organization, which is exempt from tax under section 501(c)(5) of the Internal Revenue

26 USC 501.
Ante, p. 914.

Code of 1954, exclusively for the benefit of its employees and their beneficiaries, section 412 of such Code and other amendments made by this part to the extent such amendments relate to such section 412, shall be applied by substituting for the term "December 31, 1975" in subsection (b), the earlier of—

(i) the date on which the second convention of such labor organization held after the date of the enactment of this Act ends, or

(ii) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subparagraph (A) or (B) be substituted.

(d) Existing Plans May Elect New Provisions.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act but before the applicable effective date determined under subsection (b) or (c)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

26 USC 1 et seq.

(e) Certain Definitions and Special Rules.—Section 414 of the Internal Revenue Code of 1954 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act, shall take effect on the date of the enactment of this Act.

Ante, p. 924.

(f) Transitional Rules With Respect to Breaks in Service.—

(1) Participation.—In the case of a plan to which section 410 of the Internal Revenue Code of 1954 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 410 first becomes effective with respect to such plan) provides that any employee's participation in the plan would commence at any date later than the later of—

Ante, p. 898.

(A) the date on which his participation would commence under the break in service rules of section 410(a)(5) of such Code, or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code.

26 USC 403.

(2) Vesting.—In the case of a plan to which section 411 of the Internal Revenue Code of 1954 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 411 first becomes effective with respect to such plan) provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

Ante, p. 901.

(A) the break in service rules of section 411(a)(6) of such Code, or

(B) the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code. Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

(g) 3-YEAR DELAY FOR CERTAIN PROVISIONS.—Subparagraphs (B) and (C) of section 404(a)(1) shall apply only in the case of plan years beginning on or after 3 years after the date of the enactment of this Act. Ante, p. 921.

(h)(1) Except as provided in paragraph (2), section 413 of the Internal Revenue Code of 1954 shall apply to plan years beginning after December 31, 1953. Ante, p. 924.

(2)(A) For plan years beginning before the applicable effective date of section 410 of such Code, the provisions of paragraphs (1) and (8) of subsection (b) of such section 413 shall be applied by substituting "401(a)(3)" for "410". Ante, p. 898.

(B) For plan years beginning before the applicable effective date of section 411 of such Code, the provisions of subsection (b)(2) of such section 413 shall be applied by substituting "401(a)(7)" for "411(d)(3)". Ante, p. 901.

(C)(i) The provisions of subsection (b)(4) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 411 of such Code.

(ii) The provisions of subsection (b)(5) (other than the second sentence thereof) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 412 of such Code.

PART 2—CERTAIN OTHER PROVISIONS RELATING TO QUALIFIED RETIREMENT PLANS

SEC. 1021. ADDITIONAL PLAN REQUIREMENTS.

(a) JOINT AND SURVIVOR ANNUITY REQUIREMENT.—

(1) IN GENERAL.—Effective with respect to plan years beginning after December 31, 1975, section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (10) the following new paragraph: 26 USC 401 note. 26 USC 401.

"(11)(A) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of an annuity unless such plan provides for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

"(B) Notwithstanding the provisions of subparagraph (A), in the case of a plan which provides for the payment of benefits before the normal retirement age (as defined in section 411(a)(8)), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

"(i) the date the employee reaches the earliest retirement age under the plan, or

"(ii) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

"(C) A plan described in subparagraph (B) does not meet the requirements of subparagraph (A) unless, under the plan, a participant has a reasonable period during which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subparagraph (B) ends and ending on the date on which he reaches normal retirement age (as defined in section 411(a)(8)) if he continues his employment during that period. A plan does not meet the requirements of this subparagraph unless, in the case of such an election, the payments under the survivor annuity are not less than the payments which would have been made under the

joint annuity to which the participant would have been entitled if he made an election described in this subparagraph immediately prior to his retirement and if his retirement had occurred on the day before his death and within the period within which an election can be made.

"(D) A plan shall not be treated as not satisfying the requirements of this paragraph solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election described in subparagraph (C) has been made under subparagraph (C)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

"(E) A plan shall not be treated as satisfying the requirements of this paragraph unless, under the plan, each participant has a reasonable period (as described by the Secretary or his delegate by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subparagraph) not to take such joint and survivor annuity.

"(F) A plan shall not be treated as not satisfying the requirements of this paragraph solely because under the plan there is a provision that any election described in subparagraph (C) or (E), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

"(i) the participant dies from accidental causes,

"(ii) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

"(iii) such election or revocation is made before such accident occurred.

"(G) For purposes of this paragraph—

"(i) the term 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability),

"(ii) the term 'earliest retirement age' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, and

"(iii) the term 'qualified joint and survivor annuity' means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the participant.

For purposes of this paragraph, a plan may take into account in any equitable manner (as determined by the Secretary or his delegate) any increased costs resulting from providing joint and survivor annuity benefits.

"(H) This paragraph shall apply only if—

"(i) the annuity starting date did not occur before the effective date of this paragraph, and

"(ii) the participant was an active participant in the plan on or after such effective date."

(2) CERTAIN ADDITIONAL REQUIREMENTS APPLY ONLY TO PLANS TO WHICH VESTING REQUIREMENTS APPLY.—Section 401(a) (relating to requirements for qualification) is amended by adding at the end thereof the following new sentence: "Paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section." 26 USC 401. Ante, p. 901.

(b) REQUIREMENTS IN CASE OF MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—Effective with respect to plan years beginning after December 31, 1975, section 401(a) is amended by inserting after paragraph (11) the following new paragraph: 26 USC 401 note. Ante, p. 935.

"(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation." Ante, p. 829.

(c) RETIREMENT BENEFITS MAY NOT BE ASSIGNED OR ALIENATED.—Section 401(a) is amended by inserting after paragraph (12) the following new paragraph: Supra.

"(13) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975 (d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on the date of the enactment of the Employee Retirement Income Security Act of 1974." Post, p. 971.

(d) REQUIREMENT THAT PAYMENT OF BENEFITS BEGIN NOT LATER THAN WHEN THE PARTICIPANT ATTAINS AGE 65 OR HAS COMPLETED 10 YEARS OF PARTICIPATION.—Section 401(a) is amended by inserting after paragraph (13) the following new paragraph: Supra.

"(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

"(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

"(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

"(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary or his delegate."

(e) REQUIREMENT THAT PLAN BENEFITS ARE NOT DECREASED BY CERTAIN SOCIAL SECURITY INCREASES.—Section 401(a) is amended by inserting after paragraph (14) the following new paragraph:

Ante, p. 937.

"(15) a trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

"(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

"(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after the date of the enactment of the Employee Retirement Income Security Act of 1974 or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be."

42 USC 401.

(f) REQUIREMENT OF NONFORFEITABILITY IN CASE OF CERTAIN WITHDRAWALS.—Section 401(a) is amended by inserting after paragraph (18) the following new paragraph:

Supra.

"(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before enactment of the Employee Retirement Income Security Act of 1974, in the event of withdrawal of certain mandatory contributions)."

Ante, p. 901.

SEC. 1022. MISCELLANEOUS PROVISIONS.

(a) REQUIREMENT THAT PLAN NOT BE DISCRIMINATORY.—Section 401(a)(4) (disqualifying discriminatory plans) is amended to read as follows:

26 USC 401.

"(4) If the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

"(A) officers,

"(B) shareholders, or

"(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(2) (A) and (C)." Ante, p. 898.

(b) AMENDMENTS RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—

(1) AMENDMENT OF SECTION (401)(a)(10).—So much of subparagraph (A) of section 401(a)(10) as precedes clause (i) thereof is amended to read as follows: 26 USC 401.

"(A) paragraph (3), the first and second sentences of paragraph (5), and section 410 shall not apply, but—".

(2) AMENDMENT OF SECTION (401)(d)(3).—Section 401(d)(3) (relating to additional requirements for qualification of trusts and and plans benefiting owner-employees) is amended to read as follows:

"(3)(A) The plan benefits each employee having 3 or more years of service (within the meaning of section 410(a)(3)).

"(B) For purposes of subparagraph (A), the term 'employee' does not include—

"(i) any employee included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A), and

"(ii) any employee who is a nonresident alien individual described in section 410(b)(2)(C)."

(c) PERSONS OTHER THAN BANKS MAY BE TRUSTEES OF TRUSTS BENEFITTING OWNER-EMPLOYEES.—

(1) The first sentence of section 401(d)(1) is amended to read as follows: "In the case of a trust which is created on or after October 10, 1962, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, or exchanges)." 26 USC 501.

(2) The second sentence of section 401(d)(1) is amended by striking out "the date of the enactment of this subsection" and inserting in lieu thereof "October 10, 1962,".

(d) CERTAIN CUSTODIAL ACCOUNTS.—Effective as of January 1, 1974, subsection (f) of section 401 (relating to certain custodial accounts) is amended to read as follows: 26 USC 401 note.

"(f) CERTAIN CUSTODIAL ACCOUNTS AND ANNUITY CONTRACTS.—For purposes of this title, a custodial account or an annuity contract shall be treated as a qualified trust under this section if—

"(1) the custodial account or annuity contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

"(2) in the case of a custodial account the assets thereof are held by a bank (as defined in subsection (d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or annuity contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof."

26 USC 403 and note. 26 USC 501.

(e) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—Effective as of January 1, 1974, section 403(b) (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end thereof the following new paragraph:

"(7) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—

"(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account.

Ante, p. 939.

"(B) ACCOUNT TREATED AS PLAN.—For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

"(C) REGULATED INVESTMENT COMPANY.—For purposes of this paragraph, the term 'regulated investment company' means a domestic corporation which is a regulated investment company within the meaning of section 851(a), and which issues only redeemable stock."

26 USC 851.

26 USC 401 and note.

(f) INSURED CREDIT UNIONS.—Effective as of January 1, 1974, the last sentence of section 401(d)(1) is amended by striking out "section 581," and inserting in lieu thereof "section 581, an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act),".

12 USC 1752.

(g) PUBLIC INSPECTION OF CERTAIN INFORMATION WITH RESPECT TO PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.—

26 USC 6104.

(1) AMENDMENT OF SECTION 6104(a).—Paragraph (1) of section 6104(a) (relating to public inspection of applications for tax exemption) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D) and by inserting after subparagraph (A) the following new subparagraphs:

"(B) PENSION, ETC., PLANS.—The following shall be open to public inspection at such times and in such places as the Secretary or his delegate may prescribe:

"(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan

under section 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408 (b), 26 USC 401, 403, 405.

"(ii) any application filed with respect to the exemption from tax under section 501(a) of an organization forming part of a plan or account referred to in clause (i),

"(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

"(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

Except in the case of a plan participant, this subparagraph shall not apply to any plan referred to in clause (i) having not more than 25 participants.

"(C) CERTAIN NAMES AND COMPENSATION NOT TO BE OPENED TO PUBLIC INSPECTION.—In the case of any application, document, or other papers, referred to in subparagraph (B), information from which the compensation (including deferred compensation) of any individual may be ascertained shall not be open to public inspection under subparagraph (B)."

(B) The heading of subparagraph (A) of section 6104(a)(1) is amended to read as follows: 26 USC 6104.

"(A) ORGANIZATIONS DESCRIBED IN SECTION 501.—".

(C) The heading of subparagraph (D) of section 6104(a)(1) as redesignated by subparagraph (A) of this paragraph is amended to read as follows:

"(D) WITHHOLDING OF CERTAIN OTHER INFORMATION.—".

(D) Subparagraph (D) of section 6104(a)(1) (as so redesignated) is amended by striking out "subparagraph (A)" each place it appears and inserting in lieu thereof "subparagraph (A) or (B)".

(2) AMENDMENT OF SECTION 6104(a)(2).—Subparagraph (A) of section 6104(a)(2) is amended by adding at the end thereof "any application referred to in subparagraph (B) of subsection (a)(1) of this section, and".

(3) AMENDMENT OF SECTION 6104(b).—Section 6104(b) (relating to inspection of annual information returns) is amended by striking out "and 6056" and inserting in lieu thereof "6956, and 6058".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to applications filed (or documents issued) after the date of enactment of this Act. 26 USC 6104 note.

(h) PUBLICITY OF RETURNS.—Effective on the date of the enactment of this Act, section 6103 (relating to publicity of returns and disclosure of information as to persons filing income tax returns) is amended by adding at the end thereof a new subsection (g) to read as follows: 26 USC 6103 and note.

"(g) DISCLOSURE OF INFORMATION WITH RESPECT TO DEFERRED COMPENSATION PLANS.—The Secretary or his delegate is authorized to furnish—

"(1) returns with respect to any tax imposed by this title or information with respect to such returns to the proper officers and employees of the Department of Labor and the Pension Benefit

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Guaranty Corporation for purposes of administration of Titles I and IV of the Employee Retirement Income Security Act of 1974, and

Ante, p. 832.
Post, p. 1003.

"(2) registration statements (as described in section 6057) and information with respect to such statements to the proper officers and employees of the Department of Health, Education, and Welfare for purposes of administration of section 1131 of the Social Security Act."

26 USC 6057.

Post, p. 947.

(i) CERTAIN PUERTO RICAN PENSION, ETC., PLANS TO BE EXEMPT FROM TAX UNDER SECTION 501(a).—

26 USC 501 and note.

(1) GENERAL RULE.—Effective for taxable years beginning after December 31, 1973, for purposes of section 501(a) of the Internal Revenue Code of 1954 (relating to exemption from tax), any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401(a) of such Code if such trust—

26 USC 501.

(A) forms part of a pension, profit-sharing, or stock bonus plan, and

(B) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

(2) ELECTION TO HAVE PROVISIONS OF, AND AMENDMENTS MADE BY, TITLE II OF THIS ACT APPLY.—

(A) If the administrator of a pension, profit-sharing, or stock bonus plan which is created or organized in Puerto Rico elects, at such time and in such manner as the Secretary of the Treasury may require, to have the provisions of this paragraph apply, for plan years beginning after the date of election any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Internal Revenue Code of 1954.

(B) An election under subparagraph (A), once made, is irrevocable.

(C) This paragraph applies to plan years beginning after the date of enactment of this Act.

(D) The source of any distributions made under a plan which makes an election under this paragraph to participants and beneficiaries residing outside of the United States shall be determined, for purposes of subchapter N of chapter 1 of the Internal Revenue Code of 1954, by the Secretary of the Treasury in accordance with regulations prescribed by him. For purposes of this subparagraph the United States means the United States as defined in section 7701(a)(9) of the Internal Revenue Code of 1954.

26 USC 404 note.

(j) YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW.—Effective for taxable years beginning after December 31, 1973, if—

(1) an employer is engaged in a trade or business in a foreign country,

(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

(3) such employer establishes a trust (whether organized

within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1954 the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees. 26 USC 404.

(k) RECEIPTS FOR EMPLOYEES.—Section 6051 (relating to receipts for employees) is amended by inserting after "exemption," in subsection (a) the following: "or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash,". 26 USC 6051.

SEC. 1023. RETROACTIVE CHANGES IN PLAN.

Section 401(b) (relating to certain retroactive changes in plan) is amended to read as follows: 26 USC 401.

"(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period."

SEC. 1024. EFFECTIVE DATES. 26 USC 401 note.

Except as otherwise provided in section 1021, the amendments made by section 1021 shall apply to plan years to which part I applies. Except as otherwise provided in section 1022, the amendments made by section 1022 shall apply to plan years to which part I applies. Section 1023 shall take effect on the date of the enactment of this Act.

PART 3—REGISTRATION AND INFORMATION

SEC. 1031. REGISTRATION AND INFORMATION.

(a) ANNUAL REGISTRATION AND INFORMATION RETURNS.—Part III of subchapter A of chapter 61 (relating to information returns) is amended by adding at the end thereof the following new subpart: 26 USC 6031.

"SUBPART E—REGISTRATION OF AND INFORMATION CONCERNING PENSION, ETC., PLANS

"Sec. 6057. Annual registration, etc.
"Sec. 6058. Information required in connection with certain plans of deferred compensation.
"Sec. 6059. Periodic report by actuary.

"SEC. 6057. ANNUAL REGISTRATION, ETC.

"(a) ANNUAL REGISTRATION.—

"(1) GENERAL RULE.—Within such period after the end of a plan year as the Secretary or his delegate may by regulations prescribe, the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 applies for such plan year shall file a registration statement with the Secretary or his delegate. Ante, p. 925. Ante, p. 854.

"(2) CONTENTS.—The registration statement required by paragraph (1) shall set forth—

"(A) the name of the plan,

"(B) the name and address of the plan administrator,

"(C) the name and taxpayer identifying number of each participant in the plan—

"(i) who, during such plan year, separated from the service covered by the plan,

"(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

"(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

"(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

"(E) such other information as the Secretary or his delegate may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary or his delegate that he has complied with the requirement contained in subsection (e).

"(b) NOTIFICATION OF CHANGE IN STATUS.—Any plan administrator required to register under subsection (a) shall also notify the Secretary or his delegate, at such time as may be prescribed by regulations, of—

"(1) any change in the name of the plan,

"(2) any change in the name or address of the plan administrator,

"(3) the termination of the plan, or

"(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

"(c) VOLUNTARY REPORTS.—To the extent provided in regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may receive from—

"(1) any plan to which subsection (a) applies, and

"(2) any other plan (including any governmental plan or church plan (within the meaning of section 414)),

Ante, p. 925.

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred vested benefit rights of any participant separated from the service covered by the plan during any plan year.

"(d) TRANSMISSION OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE.—The Secretary or his delegate shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health, Education, and Welfare.

"(e) INDIVIDUAL STATEMENT TO PARTICIPANT.—Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement.

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health, Education, and Welfare, may prescribe such regulations as may be necessary to carry out the provisions of this section.

"(2) PLANS TO WHICH MORE THAN ONE EMPLOYER CONTRIBUTES.—This section shall apply to any plan to which more than one

employer is required to contribute only to the extent provided in regulations prescribed under this subsection.

"(g) CROSS REFERENCES.—

"For provisions relating to penalties for failure to register or furnish statements required by this section, see section 6652(e) and section 6690.

"For coordination between Department of the Treasury and the Department of Labor with regard to administration of this section, see section 3004 of the Employee Retirement Income Security Act of 1974.

"SEC. 6058. INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.

"(a) IN GENERAL.—Every employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation described in part I of subchapter D of chapter 1, or the plan administrator (within the meaning of section 414(g)) of the plan, shall file an annual return stating such information as the Secretary or his delegate may by regulations prescribe with respect to the qualification, financial condition, and operations of the plan; except that, in the discretion of the Secretary or his delegate, the employer may be relieved from stating in its return any information which is reported in other returns.

26 USC 401.

Ante, p. 925.

"(b) ACTUARIAL STATEMENT IN CASE OF MERGERS, ETC.—Not less than 30 days before a merger, consolidation, or transfer of assets or liabilities of a plan described in subsection (a) to another plan, the plan administrator (within the meaning of section 414(g)) shall file an actuarial statement of valuation evidencing compliance with the requirements of section 401(a)(12).

Ante, p. 937.

"(c) EMPLOYER.—For purposes of this section, the term 'employer' includes a person described in section 401(c)(4) and an individual who establishes an individual retirement account or annuity described in section 408.

26 USC 401.

"(d) CROSS REFERENCES.—

"For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

"For coordination between the Department of the Treasury and the Department of Labor with respect to the information required under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974.".

(b) SANCTIONS.—

(1) FAILURE TO FILE REGISTRATION STATEMENTS OR NOTIFICATION OF CHANGE IN STATUS.—

(A) Section 6652 (relating to failure to file certain information returns) is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsections:

26 USC 6652.

"(e) ANNUAL REGISTRATION AND OTHER NOTIFICATION BY PENSION PLAN.—

"(1) REGISTRATION.—In the case of any failure to file a registration statement required under section 6057(a) (relating to annual registration of certain plans) which includes all participants required to be included in such statement, on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, an amount equal to $1 for each participant with respect to whom there is a failure to file, multiplied by the number of days during which such failure continues, but the total amount imposed under this paragraph on any person for any failure to file with respect to any plan year shall not exceed $5,000.

Ante, p. 943.

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"(2) NOTIFICATION OF CHANGE OF STATUS.—In the case of failure to file a notification required under section 6057(b) (relating to notification of change of status) on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $1 for each day during which such failure continues, but the total amounts imposed under this paragraph on any person for failure to file any notification shall not exceed $1,000.

Ante, p. 943.

"(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.—In the case of failure to file a return or statement required under section 6058 (relating to information required in connection with certain plans of deferred compensation) or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $10 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $5,000."

Ante, p. 945.
Post, p. 970.

26 USC 6652.

(B) (i) The section heading for section 6652 is amended by adding ", Registration Statements, etc." before the period at the end thereof.

(ii) The item relating to section 6652 in the table of contents for subchapter A of chapter 68 is amended by adding ", registration statements, etc." before the period of the end thereof.

(2) FAILURE TO FURNISH STATEMENT TO PARTICIPANT.—

26 USC 6671.

(A) Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6690. FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATEMENT TO PLAN PARTICIPANT.

"Any person required under section 6057(e) to furnish a statement to a participant who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6057(e), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111."

26 USC 3111.

(B) The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"Sec. 6690. Fraudulent statement or failure to furnish statement to plan participant."

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for such part III is amended by adding at the end thereof the following:

"Subpart E. Registration of and information concerning pension, etc., plans."

(2) Section 6033(c) (relating to cross references) is amended by adding at the end thereof the following:

"For provisions relating to information required in connection with certain plans of deferred compensation, see section 6058."

(3) Subsection (d) of section 6047 (relating to information with respect to certain trusts and annuity and bond purchase plans) is amended to read as follows: 26 USC 6047.

"(d) CROSS REFERENCES.—

"(1) For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

"(2) For criminal penalty for furnishing fraudulent information, see section 7207."

SEC. 1032. DUTIES OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE.

Title XI of the Social Security Act (relating to general provisions) is amended by adding at the end of part A thereof the following new section: 42 USC 1320b.

"NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO DEFERRED VESTED BENEFITS

"SEC. 1131. (a) Whenever— 42 USC 1320b-1.

"(1) the Secretary makes a finding of fact and a decision as to—

"(A) the entitlement of any individual to monthly benefits under section 202, 223, or 228, 42 USC 402, 423, 428.

"(B) the entitlement of any individual to a lump-sum death payment payable under section 202(i) on account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

"(C) the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or 42 USC 426.

"(2) the Secretary is requested to do so—

"(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of the Internal Revenue Code of 1954, or Ante, p. 943.

"(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 204(d) of this Act. 42 USC 404.

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 with respect to the individual referred to in paragraph (1) or (2)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

"(b)(1) For purposes of section 201(g)(1), expenses incurred in the administration of subsection (a) shall be deemed to be expenses incurred for the administration of title II. 42 USC 401.

"(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Secretary deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a)."

SEC. 1033. REPORTS BY ACTUARIES.

(a) REPORTS BY ACTUARIES.—Subpart E of part III of subchapter A of chapter 61 (relating to registration of and information concerning pension, etc., plans) as added by section 1031(a) of this Act, is amended by adding at the end thereof the following new section: Ante, p. 943.

"SEC. 6059. PERIODIC REPORT OF ACTUARY.

"(a) GENERAL RULE.—The actuarial report described in subsection (b) shall be filed by the plan administrator (as defined in section

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Ante, pp. 925, 914.

414(g) of each defined benefit plan to which section 412 applies, for the first plan year for which section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary or his delegate determines that more frequent reports are necessary).

"(b) ACTUARIAL REPORT.—The actuarial report of a plan required by subsection (a) shall be prepared and signed by an enrolled actuary (within the meaning of section 7701(a)(35)) and shall contain—

26 USC 7701.

"(1) a description of the funding method and actuarial assumptions used to determine costs under the plan,

"(2) a certification of the contribution necessary to reduce the accumulated funding deficiency (as defined in section 412(a)) to zero,

"(3) a statement—

"(A) that to the best of his knowledge the report is complete and accurate, and

"(B) the requirements of section 412(c) (relating to reasonable actuarial assumptions) have been complied with,

"(4) such other information as may be necessary to fully and fairly disclose the actuarial position of the plan, and

"(5) such other information regarding the plan as the Secretary or his delegate may by regulations require.

"(c) TIME AND MANNER OF FILING.—The actuarial report and statement required by this section shall be filed at the time and in the manner provided by regulations prescribed by the Secretary or his delegate.

"(d) CROSS REFERENCE.—

"For coordination between the Department of the Treasury and the Department of Labor with respect to the report required to be filed under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974.".

Ante, p. 946.

(b) ASSESSABLE PENALTIES.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6692. FAILURE TO FILE ACTUARIAL REPORT.

"The plan administrator (as defined in section 414(g)) of each defined benefit plan to which section 412 applies who fails to file the report required by section 6059 at the time and in the manner required by section 6059, shall pay a penalty of $1,000 for each such failure unless it is shown that such failure is due to reasonable cause."

Ante, p. 947.

26 USC 6059 note.

(c) CONSOLIDATION OF ACTUARIAL REPORTS.—The Secretary of the Treasury and the Secretary of Labor shall take such steps as may be necessary to assure coordination to the maximum extent feasible between the actuarial reports required by section 6059 of the Internal Revenue Code of 1954 and by section 103(d) of title I of the Employee Retirement Income Security Act of 1974.

Ante, p. 841.

(d) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6692. Failure to file actuarial report.".

26 USC 6057 note.

SEC. 1034. EFFECTIVE DATES.

This part shall take effect upon the date of the enactment of this Act; except that—

(1) the requirements of section 6059 of the Internal Revenue Code of 1954 shall apply only with respect to plan years to which part I of this title applies,

Ante, p. 943.

(2) the requirements of section 6057 of such Code shall apply only with respect to plan years beginning after December 31, 1975,

(3) the requirements of section 6058(a) of such Code shall apply only with respect to plan years beginning after the date of the enactment of this Act, and Ante, p. 945.

(4) the amendments made by section 1032 shall take effect on January 1, 1978.

PART 4—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

SEC. 1041. TAX COURT PROCEDURE.

(a) In General.—Subchapter C of chapter 76 (relating to the Tax Court, is amended by adding at the end thereof the following new part: 26 USC 7441.

"PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

"Sec. 7476. Declaratory judgments.

"SEC. 7476. DECLARATORY JUDGMENTS.

"(a) Creation of Remedy.—In a case of actual controversy involving—

"(1) a determination by the Secretary or his delegate with respect to the initial qualification or continuing qualification of a retirement plan under subchapter D of chapter 1, or

"(2) a failure by the Secretary or his delegate to make a determination with respect to—

"(A) such initial qualification, or

"(B) such continuing qualification if the controversy arises from a plan amendment or plan termination,

upon the filing of an appropriate pleading, the United States Tax Court may make a declaration with respect to such initial qualification or continuing qualification. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) Limitations.—

"(1) Petitioner.—A pleading may be filed under this section only by a petitioner who is the employer, the plan administrator, an employee who has qualified under regulations prescribed by the Secretary or his delegate as an interested party for purposes of pursuing administrative remedies within the Internal Revenue Service, or the Pension Benefit Guaranty Corporation.

"(2) Notice.—For purposes of this section, the filing of a pleading by any petitioner may be held by the Tax Court to be premature, unless the petitioner establishes to the satisfaction of the court that he has complied with the requirements prescribed by regulations of the Secretary or his delegate with respect to notice to other interested parties of the filing of the request for a determination referred to in subsection (a).

"(3) Exhaustion of administrative remedies.—The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Internal Revenue Service. A petitioner shall not be deemed to have exhausted his administrative remedies with respect to a failure by the Secretary or his delegate to make a determination with respect to initial qualification or continuing qualification of a retirement plan before the expiration of 270 days after the request for such determination was made.

"(4) PLAN PUT INTO EFFECT.—No proceeding may be maintained under this section unless the plan (and, in the case of a controversy involving the continuing qualification of the plan because of an amendment to the plan, the amendment) with respect to which a decision of the Tax Court is sought has been put into effect before the filing of the pleading. A plan or amendment shall not be treated as not being in effect merely because under the plan the funds contributed to the plan may be refunded if the plan (or the plan as so amended) is found to be not qualified.

"(5) TIME FOR BRINGING ACTION.—If the Secretary or his delegate sends by certified or registered mail notice of his determination with respect to the qualification of the plan to the persons referred to in paragraph (1) (or, in the case of employees referred to in paragraph (1), to any individual designated under regulations prescribed by the Secretary or his delegate as a representative of such employee), no proceeding may be initiated under this section by any person unless the pleading is filed before the ninety-first day after the day after such notice is mailed to such person (or to his designated representative, in the case of an employee).

"(c) COMMISSIONERS.—The chief judge of the Tax Court may assign proceedings under this section to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to such proceeding, subject to such conditions and review as the court may by rule provide.

"(d) RETIREMENT PLAN.—For purposes of this section, the term 'retirement plan' means—

"(1) a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is part of such a plan,

26 USC 401.

"(2) an annuity plan described in section 403(a), or

26 USC 403.

"(3) a bond purchase plan described in section 405(a).

26 USC 405.

"(e) CROSS REFERENCE.—

"For provisions concerning intervention by Pension Benefit Guaranty Corporation and Secretary of Labor in actions brought under this section and right of Pension Benefit Guaranty Corporation to bring action, see section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

26 USC 7451.

(1) FEE FOR FILING PETITION.—Section 7451 (relating to fee for filing petition) is amended by striking out "deficiency" and inserting in lieu thereof "deficiency or for a declaratory judgment under part IV of this subchapter".

(2) DATE OF DECISION.—Section 7459(c) (relating to date of decision) is amended by inserting before the period at the end of the first sentence the following: "or, in the case of a declaratory judgment proceeding under part IV of this subchapter, the date of the court's order entering the decision".

(3) VENUE FOR APPEAL OF DECISION.—

(A) Section 7482(b)(1) (relating to venue) is amended by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or" and by inserting after subparagraph (B) the following new subparagraph:

"(C) in the case of a person seeking a declaratory decision under section 7476, the principal place of business, or principal office or agency of the employer."

Ante, p. 949.

(B) Section 7482(b)(1) is further amended—

(i) by striking out "neither subparagraph (A) nor (B) applies" and inserting in lieu thereof "subparagraph (A), (B), and (C) do not apply"; and

(ii) by inserting before the period at the end of the last sentence thereof the following: "or as of the time the petition seeking a declaratory decision under section 7476 was filed with the Tax Court". Ante, p. 949.

(c) CLERICAL AMENDMENT.—The table of parts for subchapter C of chapter 76 (relating to the Tax Court) is amended by adding at the end thereof the following new item:

"PART IV. Declaratory judgments relating to qualification of certain retirement plans.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed more than 1 year after the date of the enactment of this Act. 26 USC 7476 note.

PART 5—INTERNAL REVENUE SERVICE

SEC. 1051. ESTABLISHMENT OF OFFICE.

(a) IN GENERAL.—Section 7802 (relating to Commissioner of Internal Revenue) is amended to read as follows: 24 USC 7802.

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS).

"(a) COMMISSIONER OF INTERNAL REVENUE.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary. Office of Employee Plans and Exempt Organizations. Establishment.

"(b) ASSISTANT COMMISSIONER FOR EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS.—There is established within the Internal Revenue Service an office to be known as the 'Office of Employee Plans and Exempt Organizations' to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary or his delegate may prescribe with respect to organizations exempt from tax under section 501(a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies)."

(b) SALARIES.—

(1) ASSISTANT COMMISSIONER.—Section 5109 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1954 is classified at GS-18, and is in addition to the number of positions authorized by section 5108(a) of this title." Supra.

(2) CLASSIFICATION OF POSITIONS AT GS-16 AND 17.—Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) In addition to the number of positions authorized by subsection (a), the Commissioner of Internal Revenue is authorized, without regard to any other provision of this section, to place a total of 20 positions in the Internal Revenue Service in GS-16 and 17.".

(c) CLERICAL AMENDMENTS.—The item relating to section 7802 in the table of sections for subchapter A of chapter 80 is amended to read as follows:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act. 26 USC 7802 note.

31 USC 1037.

SEC. 1052. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Department of the Treasury for the purpose of carrying out all functions of the Office of Employee Plans and Exempt Organizations for each fiscal year beginning after June 30, 1974, an amount equal to the sum of—

(1) so much of the collections from the taxes imposed under section 4940 of such Code (relating to excise tax based on investment income) as would have been collected if the rate of tax under such section was 2 percent during the second preceding fiscal year, and

26 USC 4940.

(2) the greater of—

(A) an amount equal to the amount described in paragraph (1), or

(B) $30,000,000.

Subtitle B—Other Amendments to the Internal Revenue Code Relating to Retirement Plans

SEC. 2001. CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.

(a) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE FOR SELF-EMPLOYED INDIVIDUALS.—

26 USC 404.

(1) Paragraph (1) of section 404(e) (relating to special limitations for self-employed individuals) is amended—

(A) by striking out "$2,500, or 10 percent" and inserting in lieu thereof "$7,500, or 15 percent", and

(B) by striking out "subject to the provisions of paragraph (2)" and inserting in lieu thereof "subject to paragraphs (2) and (4)".

(2) Paragraph (2)(A) of section 404(e) is amended by striking out "shall not exceed $2,500, or 10 percent" and inserting in lieu thereof "shall (subject to paragraph (4)) not exceed $7,500, or 15 percent".

(3) Section 404(e) is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATIONS CANNOT BE LOWER THAN $750 OR 100 PERCENT OF EARNED INCOME.—The limitations under paragraphs (1) and (2)(A) for any employee shall not be less than the lesser of—

"(A) $750, or

"(B) 100 percent of the earned income derived by such employee from the trades or businesses taken into account for purposes of paragraph (1) or (2)(A) as the case may be.".

(b) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE FOR SHAREHOLDER-EMPLOYEES.—Paragraph (1) of section 1379(b) (relating to taxability of shareholder-employees) is amended—

26 USC 1379.

(1) by striking out "10 percent" in subparagraph (A) and inserting in lieu thereof "15 percent", and

(2) by striking out "$2,500" in subparagraph (B) and inserting in lieu thereof "$7,500".

(c) ONLY FIRST $100,000 OF ANNUAL COMPENSATION TO BE TAKEN INTO ACCOUNT.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting after paragraph (16) the following new paragraph:

26 USC 401.

"(17) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if the annual compen-

sation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation."

(d) DEFINED BENEFIT PLANS FOR SELF-EMPLOYED INDIVIDUALS.—

(1) Subsection (a) of section 401 is amended by inserting after paragraph (17) the following new paragraph: Ante, p. 952.

"(18) In the case of a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if such plan satisfies the requirements of subsection (j)." 26 USC 1379.

(2) Section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection: 26 USC 401.

"(j) DEFINED BENEFIT PLANS PROVIDING BENEFITS FOR SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.—

"(1) IN GENERAL.—A defined benefit plan satisfies the requirements of this subsection only if the basic benefit accruing under the plan for each plan year of participation by an employee within the meaning of subsection (c)(1) (or a shareholder-employee) is permissible under regulations prescribed by the Secretary or his delegate under this subsection to insure that there will be reasonable comparability (assuming level funding) between the maximum retirement benefits which may be provided with favorable tax treatment under this title for such employees under—

"(A) defined contribution plans,

"(B) defined benefit plans, and

"(C) a combination of defined contribution plans and defined benefit plans.

"(2) GUIDELINES FOR REGULATIONS.—The regulations prescribed under this subsection shall provide that a plan does not satisfy the requirements of this subsection if, under the plan, the basic benefit of any employee within the meaning of subsection (c)(1) (or a shareholder-employee) may exceed the sum of the products for each plan year of participation of—

"(A) his annual compensation (not in excess of $50,000) for such year, and

"(B) the applicable percentage determined under paragraph (3).

"(3) APPLICABLE PERCENTAGE.—

"(A) TABLE.—For purposes of paragraph (2), the applicable percentage for any individual for any plan year shall be based on the percentage shown on the following table opposite his age when his current period of participation in the plan began.

"Age when participation began:	Applicable percentage
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

"(B) ADDITIONAL REQUIREMENTS.—The regulations prescribed under this subsection shall include provisions—

"(i) for applicable percentages for ages between any two ages shown on the table,

"(ii) for adjusting the applicable percentages in the case of plans providing benefits other than a basic benefit,

"(iii) that any increase in the rate of accrual, and any increase in the compensation base which may be taken into account, shall, with respect only to such increase, begin a new period of participation in the plan, and

"(iv) when appropriate, in the case of periods beginning after December 31, 1977, for adjustments in the applicable percentages based on changes in prevailing interest and mortality rates occurring after 1973.

"(4) CERTAIN CONTRIBUTIONS AND BENEFITS MAY NOT BE TAKEN INTO ACCOUNT.—A defined benefit plan which provides contributions or benefits for owner-employees does not satisfy the requirements of this subsection unless such plan meets the requirements of subsection (a)(4) without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

26 USC 1401.
26 USC 3101.
42 USC 401.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) BASIC BENEFIT.—The term 'basic benefit' means a benefit in the form of a straight life annuity commencing at the later of—

"(i) age 65, or

"(ii) the day 5 years after the day the participant's current period of participation began

under a plan which provides no ancillary benefits and to which employees do not contribute.

"(B) SHAREHOLDER-EMPLOYEE.—The term 'shareholder-employee' has the same meaning as when used in section 1379(d).

26 USC 1379.

"(C) COMPENSATION.—The term 'compensation' means—

"(i) in the case of an employee within the meaning of subsection (c)(1), the earned income of such individual, or

"(ii) in the case of a shareholder-employee, the compensation received or accrued by the individual from the electing small business corporation.

"(6) SPECIAL RULES.—Section 404(e) (relating to special limitations for self-employed individuals) and section 1379(b) (relating to taxability of shareholder-employee beneficiaries) do not apply to a trust to which this subsection applies.".

Ante, p. 952.

(e) REPEAL OF EXISTING TAX TREATMENT OF EXCESS CONTRIBUTIONS.—

(1) The last sentence of section 401(d)(5) is amended to read as follows: "Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)."

26 USC 401.

(2) Paragraph (8) of section 401(d) is repealed.

Repeal.

(3) Subsection (e) of section 401 is amended to read as follows:

"(e) CONTRIBUTIONS FOR PREMIUMS ON ANNUITY, ETC., CONTRACTS.—A contribution by the employer on behalf of an owner-employee is described in this subsection if—

"(1) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

"(2) the amount of such contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

"(3) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with

respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible if such section had been in effect) for the first three taxable years (A) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan, and (B) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in paragraph (1) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence does not apply if the amount of such contributions under all such plans for all such years exceeds $7,500. Any contribution which is described in this subsection shall, for purposes of section 4972(b), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year, but only for the purpose of applying section 4972(b) to other contributions made by such owner-employee as an employee."

Infra.

26 USC 404.

(4) Clause (ii) of section 401(a)(10)(A) is amended by striking out "subsection (e)(3)(A)" and inserting in lieu thereof "subsection (e)".

26 USC 401.

(5) Subparagraph (A) of section 72(m)(5)(A) is amended—

(A) by inserting "and" at the end of clause (i),

(B) by striking out the comma at the end of clause (ii) and the word "and" following that comma, and inserting in lieu thereof a period, and

(C) by striking out clause (iii).

(f) Tax on Excess Contributions.—

(1) Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4971 the following new section:

Ante, p. 920.

"SEC. 4972. TAX ON EXCESS CONTRIBUTIONS FOR SELF-EMPLOYED INDIVIDUALS.

"(a) Tax Imposed.—In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), there is imposed, for each taxable year of the employer who maintains such plan, a tax in an amount equal to 6 percent of the amount of the excess contributions under the plan (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by the employer who maintains the plan. This section applies only to plans which include a trust described in section 401(a), which are described in section 403(a), or which are described in section 405(a).

"(b) Excess Contributions.—

"(1) In general.—For purposes of this section, the term 'excess contributions' means the sum of the amounts (if any) determined under paragraphs (2), (3), and (4), reduced by the sum of the correcting distributions (as defined in paragraph (5)) made in all prior taxable years beginning after December 31, 1975. For purposes of this subsection the amount of any contribution which is allocable (determined under regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

"Excess contributions."

"(2) Contributions by owner-employees.—The amount determined under this paragraph, in the case of a plan which provides contributions or benefits for employees some or all of whom are

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26 USC 401.

owner-employees (within the meaning of section 401(c)(3)), is the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed under the plan by each owner-employee (as an employee) for the taxable year, over

"(ii) the amount permitted to be contributed by each owner-employee (as an employee) for such year, and

"(B) the amount determined under this paragraph for the preceding taxable year of the employer,

reduced by the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

"(3) DEFINED BENEFIT PLANS.—The amount determined under this paragraph, in the case of a defined benefit plan, is the amount contributed under the plan by the employer during the taxable year or any prior taxable year beginning after December 31, 1975, if—

"(A) as of the close of the taxable year, the full funding limitation of the plan (determined under section 412(c)(7)) is zero, and

"(B) such amount has not been deductible for the taxable year or any prior taxable year.

"(4) DEFINED CONTRIBUTION PLANS.—The amount determined under this paragraph, in the case of a plan other than a defined benefit plan, is the portion of the amounts contributed under the plan by the employer during the taxable year and each prior taxable year beginning after December 31, 1975, which has not been deductible for the taxable year or any prior taxable year.

"(5) CORRECTING DISTRIBUTION.—For purposes of this subsection the term 'correcting distribution' means—

"(A) in the case of a contribution made by an owner-employee as an employee, regardless of the type of plan, the amount determined under paragraph (2) distributed to the owner-employee who contributed such amount,

"(B) in the case of a defined benefit plan, the amount determined under paragraph (3) which is distributed from the plan to the employer, and

"(C) in the case of a defined contribution plan, the amount determined under paragraph (4) which is distributed from the plan to the employer or to the employee to the account of whom the amount described was contributed.

"(c) AMOUNT PERMITTED TO BE CONTRIBUTED BY OWNER-EMPLOYEE.—For purposes of subsection (b)(2), the amount permitted to be contributed under a plan by an owner-employee (as an employee) for any taxable year is the smallest of the following:

"(1) $2,500,

"(2) 10 percent of the earned income (as defined in section 401(c)(2)) for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established, or

"(3) the amount of the contribution which would be contributed by the owner-employee (as an employee) if such contribution were made at the rate of contributions permitted to be made by employees other than owner-employees.

In any case in which there are no employees other than owner-employees, the amount determined under the preceding sentence shall be zero.

"(d) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section, see section 275.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by inserting after the item relating to section 4971 the following new item:

"Sec. 4972. Tax on excess contributions for self-employed individuals.".

(g) PREMATURE DISTRIBUTIONS TO OWNER-EMPLOYEES.—

(1) IN GENERAL.—Subparagraph (B) of section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) is amended to read as follows: 26 USC 72.

"(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraphs (C), (D), and (E) of section 72(m)(5) are repealed. Repeals.

(B) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3), as each is amended by section 2005(c)(4) of this Act, are each amended by inserting after "tax preferences)," the following: "section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),". Supra.

(C) The third sentence of section 901(a), as amended by section 2005(c)(5) of this Act, is amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),".

(D) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c), as each is amended by section 2005(c)(7) of this Act, are each amended by striking out "402(e)" and inserting in lieu thereof "72(m)(5)(B), 402(e)".

(E) Section 404(a)(2) *is amended by striking out* "(16)" and inserting in lieu thereof "(16), (17), (18)".

(F) Clause (ii) of section 404(a)(9)(B) is amended to read as follows:

"(ii) without regard to the second sentence of paragraph (3); and".

(h) WITHDRAWAL OF EMPLOYEE CONTRIBUTIONS OF OWNER-EMPLOYEES.—

(1) Section 401(d)(4)(B) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended by inserting "in excess of contributions made by an owner-employee as an employee" after "benefits".

(2) Paragraph (1) of section 72(m) (relating to certain amounts received before annuity starting date) is repealed. Repeal.

(3) Section 72(m)(5)(A)(i) is amended by striking out "(whether or not paid by him)" and inserting in lieu thereof the following: "(other than contributions made by him as an owner-employee)".

(i) EFFECTIVE DATES.— 26 USC 404 note.

(1) The amendments made by subsections (a) and (b) apply to taxable years beginning after December 31, 1973.

26 USC 401 note.

(2) The amendments made by subsection (c) apply to—

(A) taxable years beginning after December 31, 1975, and

(B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) as in effect on the day before the date of the enactment of this Act.

Ante, p. 952.
26 USC 1379.

(3) The amendments made by subsection (d) apply to taxable years beginning after December 31, 1975.

(4) The amendments made by subsections (e) and (f) apply to contributions made in taxable years beginning after December 31, 1975.

26 USC 72 note.

(5) The amendments made by subsection (g) apply to distributions made in taxable years beginning after December 31, 1975.

(6) The amendments made by subsection (h) apply to taxable years ending after the date of enactment of this Act.

SEC. 2002. DEDUCTION FOR RETIREMENT SAVINGS.

(a) ALLOWANCE OF DEDUCTION.—

26 USC 211.

(1) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 219 as 220 and by inserting after section 218 the following new section:

"SEC. 219. RETIREMENT SAVINGS.

"(a) DEDUCTION ALLOWED.—In the case of an individual, there is allowed as a deduction amounts paid in cash during the taxable year by or on behalf of such individual for his benefit—

"(1) to an individual retirement account described in section 408(a),

"(2) for an individual retirement annuity described in section 408(b), or

"(3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance).

For purposes of this title, any amount paid by an employer to such a retirement account or for such a retirement annuity or retirement bond constitutes payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1) includible in his gross income, whether or not a deduction for such payment is allowable under this section to the employee after the application of subsection (b).

"(b) LIMITATIONS AND RESTRICTIONS.—

"(1) MAXIMUM DEDUCTION.—The amount allowable as a deduction under subsection (a) to an individual for any taxable year may not exceed an amount equal to 15 percent of the compensation includible in his gross income for such taxable year, or $1,500, whichever is less.

"(2) COVERED BY CERTAIN OTHER PLANS.—No deduction is allowed under subsection (a) for an individual for the taxable year if for any part of such year—

"(A) he was an active participant in—

"(i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(ii) an annuity plan described in section 403(a),

"(iii) a qualified bond purchase plan described in section 405(a), or

"(iv) a plan established for its employees by the United States, by a State or political division thereof, or

by an agency or instrumentality of any of the foregoing, or

"(B) amounts were contributed by his employer for an annuity contract described in section 403(b) (whether or not his rights in such contract are nonforfeitable). 26 USC 403.

"(3) CONTRIBUTIONS AFTER AGE 70½.—No deduction is allowed under subsection (a) with respect to any payment described in subsection (a) which is made during the taxable year of an individual who has attained age 70½ before the close of such taxable year.

"(4) RECONTRIBUTED AMOUNTS.—No deduction is allowed under this section with respect to a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C). Post, pp. 991, 969, 964.

"(5) AMOUNTS CONTRIBUTED UNDER ENDOWMENT CONTRACT.—In the case of an endowment contract described in section 408(b), no deduction is allowed under subsection (a) for that portion of the amounts paid under the contract for the taxable year properly allocable, under regulations prescribed by the Secretary or his delegate, to the cost of life insurance. Supra.

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) COMPENSATION.—For purposes of this section, the term 'compensation' includes earned income as defined in section 401(c)(2).

"(2) MARRIED INDIVIDUALS.—The maximum deduction under subsection (b)(1) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.".

(2) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Section 62 (defining adjusted gross income) is amended by inserting after paragraph (9) the following new paragraph:

"(10) RETIREMENT SAVINGS.—The deduction allowed by section 219 (relating to deduction of certain retirement savings).".

(b) INDIVIDUAL RETIREMENT ACCOUNTS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by adding at the end thereof the following new section: 26 USC 401.

"SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this section, the term 'individual retirement account' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

"(1) Except in the case of a rollover contribution described in subsection (d)(3) in section 402(a)(5), 403(a)(4), or 409(b)(3)(C), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year in excess of $1,500 on behalf of any individual.

"(2) The trustee is a bank (as defined in section 401(d)(1)) or such other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

"(3) No part of the trust funds will be invested in life insurance contracts.

"(4) The interest of an individual in the balance in his account is nonforfeitable.

"(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(6) The entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such individual or the lives of such individual and his spouse, or

"(B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

"(7) If an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence does not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

"(b) INDIVIDUAL RETIREMENT ANNUITY.—For purposes of this section, the term 'individual retirement annuity' means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary or his delegate), issued by an insurance company which meets the following requirements:

"(1) The contract is not transferable by the owner.

"(2) The annual premium under the contract will not exceed $1,500 and any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

"(3) The entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such owner or the lives of such owner and his spouse, or

"(B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

"(4) If the owner dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such bene-

ficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall have no application if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

"(5) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed $1,500.

"(c) Accounts Established by Employers and Certain Associations of Employees.—A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements: 26 USC 401.

"(1) The trust satisfies the requirements of paragraphs (1) through (7) of subsection (a).

"(2) There is a separate accounting for the interest of each employee or member.

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

"(d) Tax Treatment of Distributions.—

"(1) In general.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. The basis of any person in such an account or annuity is zero.

"(2) Distributions of annuity contracts.—Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero. 26 USC 72.

"(3) Rollover contribution.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

"(A) In general.—Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

"(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) or retirement bond

for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

"(ii) the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an employees' trust described in section 401(a) which is exempt from tax under section 501(a) (other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan), or an annuity plan described in section 403(a) (other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution.

26 USC 401.

"(B) LIMITATION.—This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 3-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account, individual retirement annuity. or a retirement bond which was not includible in his gross income because of the application of this paragraph.

"(4) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity to the extent that such contribution exceeds the amount allowable as a deduction under section 219 if—

Ante, p. 958.

"(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

"(B) no deduction is allowed under section 219 with respect to such excess contribution, and

"(C) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received.

"(5) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in an individual retirement account, individual retirement annuity, or retirement bond to his former spouse under a divorce decree or under a written instrument incident to such divorce is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account, annuity, or bond for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

"(e) TAX TREATMENT OF ACCOUNTS AND ANNUITIES.—

"(1) EXEMPTION FROM TAX.—Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations). 26 USC 511.

"(2) LOSS OF EXEMPTION OF ACCOUNT WHERE EMPLOYEE ENGAGES IN PROHIBITED TRANSACTION.—

"(A) IN GENERAL.—If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph— Post, p. 971.

"(i) the individual for whose benefit any account was established is treated as the creator of such account, and

"(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

"(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

"(3) EFFECT OF BORROWING ON ANNUITY CONTRACT.—If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

"(4) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

"(5) PURCHASE OF ENDOWMENT CONTRACT BY INDIVIDUAL RETIREMENT ACCOUNT.—If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

"(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3), and

"(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

"(6) COMMINGLING INDIVIDUAL RETIREMENT ACCOUNT AMOUNTS IN CERTAIN COMMON TRUST FUNDS AND COMMON INVESTMENT FUNDS.—Any common trust fund or common investment fund of

individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).

26 USC 501, 401.

"(f) ADDITIONAL TAX ON CERTAIN AMOUNTS INCLUDED IN GROSS INCOME BEFORE AGE 59½—

"(1) EARLY DISTRIBUTIONS FROM AN INDIVIDUAL RETIREMENT ACCOUNT, ETC.—If a distribution from an individual retirement account or under an individual retirement annuity to the individual for whose benefit such account or annuity was established is made before such individual attains age 59½, his tax under this chapter for the taxable year in which such distribution is received shall be increased by an amount equal to 10 percent of the amount of the distribution which is includible in his gross income for such taxable year.

"(2) DISQUALIFICATION CASES.—If an amount is includible in gross income for a taxable year under subsection (e) and the taxpayer has not attained age 59½ before the beginning of such taxable year, his tax under this chapter for such taxable year shall be increased by an amount equal to 10 percent of such amount so required to be included in his gross income.

"(3) DISABILITY CASES.—Paragraphs (1) and (2) do not apply if the amount paid or distributed, or the disqualification of the account or annuity under subsection (e), is attributable to the taxpayer becoming disabled within the meaning of section 72(m)(7).

"(g) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

"(h) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 401(d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(i) REPORTS.—The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary or his delegate and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions, distributions, and such other matters as the Secretary or his delegate may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.

"(j) CROSS REFERENCES.—

"(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4973.

"(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974."

(c) RETIREMENT BONDS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by inserting after section 408 the following new section:

Ante, p. 959.

"SEC. 409. RETIREMENT BONDS.

"(a) RETIREMENT BOND.—For purposes of this section and section 219(a), the term 'retirement bond' means a bond issued under the

Ante, p. 958.

Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary or his delegate under such Act— 40 Stat. 288. 31 USC 774.

"(1) provides for payment of interest, or investment yield, only on redemption;

"(2) provides that no interest, or investment yield, is payable if the bond is redeemed within 12 months after the date of its issuance;

"(3) provides that it ceases to bear interest, or provide investment yield on the earlier of—

"(A) the date on which the individual in whose name it is purchased (hereinafter in this section referred to as the 'registered owner') attains age 70½; or

"(B) 5 years after the date on which the registered owner dies, but not later than the date on which he would have attained the age 70½ had he lived;

"(4) provides that, except in the case of a rollover contribution described in subsection (b)(3)(C) or in section 402(a)(5), 403(a)(4), or 408(d)(3) the registered owner may not contribute for the purchase of such bonds in excess of $1,500 in any taxable year; and Post, p. 991. Post, p. 969. Ante, p. 959.

"(5) is not transferable.

"(b) Income Tax Treatment of Bonds.—

"(1) In general.—Except as otherwise provided in this subsection, on the redemption of a retirement bond the entire proceeds shall be included in the gross income of the taxpayer entitled to the proceeds on redemption. If the registered owner has not tendered it for redemption before the close of the taxable year in which he attains age 70½, such individual shall include in his gross income for such taxable year the amount of proceeds he would have received if the bond had been redeemed at age 70½. The provisions of section 72 (relating to annuities) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply to a retirement bond. 26 USC 72.

"(2) Basis.—The basis of a retirement bond is zero.

"(3) Exceptions.—

"(A) Redemption within 12 months.—If a retirement bond is redeemed within 12 months after the date of its issuance, the proceeds are excluded from gross income if no deduction is allowed under section 219 on account of the purchase of such bond. Ante, p. 958.

"(B) Redemption after age 70½.—If a retirement bond is redeemed after the close of the taxable year in which the registered owner attains age 70½, the proceeds from the redemption of the bond are excluded from the gross income of the registered owner to the extent that such proceeds were includible in his gross income for such taxable year.

"(C) Rollover into an individual retirement account or annuity or a qualified plan.—If a retirement bond is redeemed at any time before the close of the taxable year in which the registered owner attains age 70½, and the registered owner transfers the entire amount of the proceeds from the redemption of the bond to an individual retirement account described in section 408(a) or to an individual retirement annuity described in section 408(b) (other than an endowment contract) which is maintained for the benefit of the registered owner of the bond, or to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) Ante, p. 959. 26 USC 401.

for the benefit of the registered owner, on or before the 60th day after the day on which he received the proceeds of such redemption, then the proceeds shall be excluded from gross income and the transfer shall be treated as a rollover contribution described in section 403(d)(3). This subparagraph does not apply in the case of a transfer to such an employees' trust or such an annuity plan unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an employees' trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan).

26 USC 403.

"(c) ADDITIONAL TAX ON CERTAIN REDEMPTIONS BEFORE AGE 59½.—

"(1) EARLY REDEMPTION OF BOND.—If a retirement bond is redeemed by the registered owner before he attains age 59½, his tax under this chapter for the taxable year in which the bond is redeemed shall be increased by an amount equal to 10 percent of the amount of the proceeds of the redemption includible in his gross income for the taxable year.

"(2) DISABILITY CASES.—Paragraph (1) does not apply for any taxable year during which the retirement bond is redeemed if, for that taxable year, the registered owner is disabled within the meaning of section 72(m)(7).

26 USC 72.

"(3) REDEMPTION WITHIN ONE YEAR.—Paragraph (1) does not apply if the registered owner tenders the bond for redemption within 12 months after the date of its issuance.".

(d) EXCISE TAX ON EXCESS CONTRIBUTIONS.—Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4972 the following new section:

Ante, p. 955.

"SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS, CERTAIN SECTION 403(b) CONTRACTS, CERTAIN INDIVIDUAL RETIREMENT ANNUITIES, AND CERTAIN RETIREMENT BONDS.

"(a) TAX IMPOSED.—In the case of—

"(1) an individual retirement account (within the meaning of section 408(a)),

Ante, p. 959.

"(2) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock), or

Ante, p. 940.

Ante, p. 964.

"(3) a retirement bond (within the meaning of section 409), established for the benefit of any individual, there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts, annuities, or bonds (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account, annuity, or bond (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

"(b) EXCESS CONTRIBUTIONS.—For purposes of this section, in the case of individual retirement accounts, individual retirement annuities, or bonds, the term 'excess contributions' means the sum of—

"(1) the excess (if any) of—

"(A) the amount contributed for the taxable year to the accounts or for the annuities or bonds (other than a rollover contribution described in section 402(a)(5), 403(a)(4), 408 (d)(3)), or 409(b)(3)(C), over

"(B) the amount allowable as a deduction under section 219 for such contributions, and

Post, pp. 991, 969; Ante, pp. 959, 964.

"(2) the amount determined under this subsection for the preceding taxable year, reduced by the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable year and reduced by the sum of the distributions out of the account (for all prior taxable years) which were included in the gross income of the payee under section 408(d)(1). For purposes of this paragraph, any contribution which is distributed out of the individual retirement account, individual retirement annuity, or bond in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

Ante, p. 958.

"(c) SECTION 403(b) CONTRACTS.—For purposes of this section, in the case of a custodial account referred to in subsection (a)(3), the term 'excess contributions' means the sum of—

"Excess contributions."

"(1) the excess (if any) of the amount contributed for the taxable year to such account, over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

26 USC 403.
Post, p. 979.

"(2) the amount determined under this subsection for the preceding taxable year, reduced by—

"(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

"(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e)."

(e) EXCISE TAX ON EXCESSIVE ACCUMULATIONS.—Chapter 43 is amended by inserting after section 4973 the following new section:

Ante, p. 966.

"SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.

"(a) IMPOSITION OF TAX.—If, in the case of an individual retirement account or individual retirement annuity, the amount distributed during the taxable year of the payee is less than the minimum amount required to be distributed under section 408(a)(6) or (7), or 408(b)(3) or (4) during such year, there is imposed a tax equal to 50 percent of the amount by which the minimum amount required to be distributed during such year exceeds the amount actually distributed during the year. The tax imposed by this section shall be paid by such payee.

Ante, p. 959.

"(b) REGULATIONS.—For purposes of this section, the minimum amount required to be distributed during a taxable year under section 408(a)(6) or (7) or 408(b)(3) or (4) shall be determined under regulations prescribed by the Secretary or his delegate.".

(f) PENALTY FOR FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

Ante, p. 946.

"SEC. 6693. FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.

Penalty.
Ante, p. 959.

"(a) The person required by section 408(i) to file a report regarding an individual retirement account or individual retirement annuity at the time and in the manner required by section 408(i) shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

26 USC 6211.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) does not apply to the assessment or collection of any penalty imposed by subsection (a).".

26 USC 37.

(g) CONFORMING AMENDMENTS.—

(1) Section 37(c)(1) (defining retirement income) is amended—

(A) by striking out "and" at the end of subparagraph (D),

(B) by adding at the end of subparagraph (E) the following: "retirement bonds described in section 409, and", and

(C) by adding at the end thereof the following new paragraph:

"(F) an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b), or".

(2) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3), as each is amended by sections 2001(g)(2)(B) and 2005(c)(4) of this Act, are each amended by inserting after "owner-employees)," the following: "section 408(e) (relating to additional tax on income from certain retirement accounts),".

(3) The third sentence of section 901(a), as amended by section 2005(c)(5) of this Act, is amended by inserting "against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts)," before "against the tax imposed by section 531".

(4) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by striking out "531" and inserting in lieu thereof "408(f), 531,".

(5) Section 402(a) (relating to taxability of beneficiary of exempt trust), as amended by section 2005(c)(2) of this Act, is amended by inserting after paragraph (5) the following new paragraph:

"(5) ROLLOVER AMOUNTS.—In the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if—

"(A) the balance to the credit of an employee is paid to him on one or more distributions which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subsection (e)(4)(B)),

"(B)(i) the employee transfers all the property he receives in such distribution to an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e)(4)(D)(i), or

"(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

or to an annuity plan described in section 403(a) on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e)(4)(D)(i), and 26 USC 403.

"(C) the amount so transferred consists of the property (other than money) distributed, to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distributions are not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution as described in section 408(d)(3). Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of the lump sum distribution described in subparagraph (A) is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan." Ante, p. 959.

(6) Section 403(a) (relating to taxation of employee annuities) is amended by adding after paragraph (3) the following new paragraph:

"(4) ROLLOVER AMOUNTS.—In the case of an employee annuity described in 403(a), if—

"(A) the balance to the credit of an employee is paid to him in one or more distributions which constitute a lump sum distribution within the meaning of section 402(e)(4)(A) determined without reference to section 402(e)(4)(B), Ante, p. 953.

"(B)(i) the employee transfers all the property he receives in such distribution to an individual account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), or

"(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in subsection (a) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), and

"(C) the amount so transferred consists of the property distributed to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distribution is not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution described in section 408(d)(3).

Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of the lump sum distribution described in subparagraph (A) is attributable to an annuity plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.".

26 USC 3401.

(7) Section 3401(a)(12) (relating to exemption from collection of income tax at source on certain wages) is amended by adding at the end thereof the following new subparagraph:

Ante, p. 958.

"(D) for a payment described in section 219(a) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for payment; or".

26 USC 6047.

(8) Section 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) OTHER PROGRAMS.—To the extent provided by regulations prescribed by the Secretary or his delegate, the provisions of this section apply with respect to any payment described in section 219(a) and to transactions of any trust described in section 408(a) or under an individual retirement annuity described in section 408(b).".

Ante, p. 959.

Pension plan reserves.
26 USC 805.

(9) Section 805(d)(i) (relating to definition of pension plan reserves) is amended by striking out "or" at the end of subparagraph (C), by striking out "foregoing." at the end of subparagraph (D) and inserting in lieu thereof "foregoing; or", and by adding at the end thereof the following new subparagraph:

"(E) purchased under contracts entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b)."

(10) Section 72 (relating to annuities) is amended—

(A) by inserting after "501(a)" in subsection (m)(4)(A) ", an individual retirement amount described in section 408(a), an individual retirement annuity described in section 408(b)".

(B) by striking out at the end of subsection (m)(6) "401(c)(3)" and inserting in lieu thereof "401(c)(3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408 (a) or (b) is maintained".

(11) Section 801(g)(7) (relating to basis of assets held for qualified pension plan contracts) is amended by striking out "or (D)" and inserting in lieu thereof "(D), or (E)".

(h) CLERICAL AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 219 and inserting in lieu thereof the following:

"Sec. 219. Retirement savings.
"Sec. 220. Cross references.".

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by adding at the end thereof the following:

"Sec. 408. Individual retirement accounts.
"Sec. 409. Retirement bonds.".

(3) The table of sections for chapter 43 is amended by inserting after the item relating to section 4972 the following new items:

"Sec. 4973. Tax on excess contributions to individual retirement accounts, certain 403(b) contracts, certain individual retirement annuities, and certain retirement bonds.
"Sec. 4974. Tax on certain accumulations in individual retirement accounts.
"Sec. 4975. Tax on prohibited transactions.".

(4) The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6693. Failure to provide reports on individual retirement accounts or annuities.".

(i) EFFECTIVE DATES.—

(1) The amendments made by subsections (a), (b), and (c) apply to taxable years beginning after December 31, 1974. 26 USC 219 note.

(2) The amendments made by subsections (d) through (h) except subsection (g)(5) and (6) shall take effect on January 1, 1975. 26 USC 4973 note.

(3) The amendments made by subsection (g)(5) and (6) shall apply on and after the date of enactment of this Act with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code. 26 USC 402 note.

SEC. 2003. PROHIBITED TRANSACTIONS.

(a) EXCISE TAX ON PROHIBITED TRANSACTIONS.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding after section 4974 the following new section: Ante, p. 967.

"SEC. 4975. TAX ON PROHIBITED TRANSACTIONS.

"(a) INITIAL TAXES ON DISQUALIFIED PERSON.—There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 5 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

"(b) ADDITIONAL TAXES ON DISQUALIFIED PERSON.—In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

"(c) PROHIBITED TRANSACTION.—

"(1) GENERAL RULE.—For purposes of this section, the term 'prohibited transaction' means any direct or indirect—

"(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

"(B) lending of money or other extension of credit between a plan and a disqualified person;

"(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

"(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

"(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or

"(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

"(2) SPECIAL EXEMPTION.—The Secretary or his delegate shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction,

orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary or his delegate may not grant an exemption under this paragraph unless he finds that such exemption is—

Exemption.

"(A) administratively feasible,

"(B) in the interests of the plan and of its participants and beneficiaries, and

"(C) protective of the rights of participants and beneficiaries of the plan.

Notice, publication in Federal Register.

Before granting an exemption under this paragraph, the Secretary or his delegate shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary or his delegate affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except that in lieu of such hearing the Secretary or his delegate may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

Ante, p. 883.

"(3) SPECIAL RULE FOR INDIVIDUAL RETIREMENT ACCOUNTS.—An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt for the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

"(d) EXEMPTIONS.—The prohibitions provided in subsection (c) shall not apply to—

"(1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

"(A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

"(B) is not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees,

"(C) is made in accordance with specific provisions regarding such loans set forth in the plan,

"(D) bears a reasonable rate of interest, and

"(E) is adequately secured;

"(2) any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

"(3) any loan to an employee stock ownership plan (as defined in subsection (e)(7)), if—

"(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

"(B) such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e)(8));

"(4) the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

"(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

"(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;

"(5) any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

"(A) the employer maintaining the plan, or

"(B) a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

"(6) the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—

"(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

"(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary or his delegate after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—

"(i) in an excessive or unreasonable manner, and

"(ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

"(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary or his delegate, but only if the plan receives no less than adequate consideration pursuant to such conversion;

"(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or

Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—

"(A) the transaction is a sale or purchase of an interest in the fund,

"(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

"(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

"(9) receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

"(10) receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

"(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

"(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets); or

Post, p. 1025.

"(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction).

The exemptions provided by this subsection (other than paragraphs (9) and (12) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section 1379), a participant or beneficiary of an individual retirement account, individual retirement annuity, on an individual retirement bond (as defined in section 408 or 409), and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee.

26 USC 267.

Ante, p. 959.

"(e) DEFINITIONS.—

"(1) PLAN.—For purposes of this section, the term 'plan' means a trust described in section 401(a) which forms a part of a plan,

or a plan described in section 403(a) or 405(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) or a retirement bond described in section 409 (or a trust, plan, account, annuity, or bond which, at any time, has been determined by the Secretary or his delegate to be such a trust, plan, account, or bond).

Ante, p. 969.
26 USC 405.
Ante, p. 959.
Ante, p. 967.

"(2) DISQUALIFIED PERSON.—For purposes of this section, the term 'disqualified person' means a person who is—

"(A) a fiduciary;

"(B) a person providing services to the plan;

"(C) an employer any of whose employees are covered by the plan;

"(D) an employee organization any of whose members are covered by the plan;

"(E) an owner, direct or indirect, of 50 percent or more of—

"(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

"(ii) the capital interest or the profits interest of a partnership, or

"(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

"(F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);

"(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

"(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

"(ii) the capital interest or profits interest of such partnership, or

"(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

"(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or

"(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

"(3) FIDUCIARY.—For purposes of this section, the term 'fiduciary' means any person who—

"(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

"(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

"(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

Ante, p. 878.

"(4) STOCKHOLDINGS.—For purposes of paragraphs (2)(E)(i) and (G)(i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

26 USC 267.

"(5) PARTNERSHIPS; TRUSTS.—For purposes of paragraphs (2)(E)(ii) and (iii), (G)(ii) and (iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

"(6) MEMBER OF FAMILY.—For purposes of paragraph (2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

"(7) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means a defined contribution plan—

"(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and

Ante, p. 953.

"(B) which is otherwise defined in regulations prescribed by the Secretary or his delegate.

"(8) QUALIFYING EMPLOYER SECURITY.—The term 'qualifying employer security' means an employer security which is—

"(A) stock or otherwise an equity security, or

"(B) a bond, debenture, note, or certificate or other evidence of indebtedness which is described in paragraphs (1), (2), and (3) of section 503(e).

If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

54 Stat. 789.
15 USC 80a-51.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) JOINT AND SEVERAL LIABILITY.—If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

"(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any prohibited transaction, the period beginning with

the date on which the prohibited transaction occurs and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency pursuant to section 6212, with respect to the tax imposed by subsection (a), or 26 USC 6212.

"(B) the date on which correction of the prohibited transaction is completed.

"(3) SALE OR EXCHANGE; ENCUMBERED PROPERTY.—A transfer of real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.

"(4) AMOUNT INVOLVED.—The term 'amount involved' means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2) and (10) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

"(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and

"(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the correction period.

"(5) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

"(6) CORRECTION PERIOD.—The term 'correction period' means, with respect to a prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (b) under section 6212, extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) any other period which the Secretary or his delegate determines is reasonable and necessary to bring about the correction of the prohibited transaction.

"(g) APPLICATION OF SECTION.—This section shall not apply—

"(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b)(2)(B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy; Ante, p. 874.

"(2) to a governmental plan (within the meaning of section 414(d)); or Ante, p. 925.

"(3) to a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made. Ante, p. 898.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company. 54 Stat. 789. 15 USC 80a-51.

"(h) NOTIFICATION OF SECRETARY OF LABOR.—Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary or his delegate shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

"(i) CROSS REFERENCE.—

"For provisions concerning coordination procedures between Secretary of Labor and Secretary of Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3003 of the Employee Retirement Income Security Act of 1974.".

Post, p. 998.

26 USC 503.

(b) AMENDMENT OF SECTION 503.—Section 503 (relating to requirements for exemption) is amended—

(1) by striking out "or (18)" in subsection (a)(1)(A),

(2) by amending subsection (a)(1)(B) by inserting "which is referred to in section 4975(g) (2) or (3)" after "described in section 401(a)",

(3) by striking out "or section 401" in subsection (a)(2) and inserting in lieu thereof "or paragraph (1)(B)",

(4) by striking out "or section 401" in subsection (c) and inserting in lieu thereof "or subsection (a)(1)(B)", and

(5) by striking out subsection (g).

26 USC 4975 note.

(c) EFFECTIVE DATE AND SAVINGS PROVISIONS.—

(1)(A) The amendments made by this section shall take effect on January 1, 1975.

(B) If, before the amendments made by this section take effect, an organization described in section 401(a) of the Internal Revenue Code of 1954 is denied exemption under section 501(a) of such Code by reason of section 503 of such Code, the denial of such exemption shall not apply if the disqualified person elects (in such manner and at such time as the Secretary or his delegate shall by regulations prescribe) to pay, with respect to the prohibited transaction (within the meaning of section 503 (b) or (g)) which resulted in such denial of exemption, a tax in the amount and in the manner provided with respect to the tax imposed under section 4975 of such Code. An election made under this subparagraph, once made, shall be irrevocable. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

Ante, p. 935.

Ante, p. 971.

Regulations.

(2) Section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) shall not apply to—

(A) a loan of money or other extension of credit between a plan and a disqualified person under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of such Code or the corresponding provisions of prior law);

(B) a lease or joint use of property involving the plan and a disqualified person pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited

transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law; 26 USC 503.

(C) the sale, exchange, or other disposition of property described in subparagraph (B) between a plan and a disqualified person before June 30, 1984, if—

(i) in the case of a sale, exchange, or other disposition of the property by the plan to the disqualified person, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(ii) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(D) Until June 30, 1977, the provision of services to which subparagraphs (A), (B), and (C) do not apply between a plan and a disqualified person (i) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or (ii) if the disqualified person ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law; or

(E) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a disqualified person, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a)(2)(A) (relating to the prohibition against holding excess employer securities and employer real property) of the Employee Retirement Income Security Act of 1974, and if the plan receives not less than adequate consideration. Ante, p. 880.

For the purposes of this paragraph, the term "disqualified person" has the meaning provided by section 4975(e)(2) of the Internal Revenue Code of 1954.

SEC. 2004. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS.

(a) PLAN REQUIREMENTS.—

(1) Section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (15) the following new paragraph: Ante, p. 938.

"(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415." Infra.

(2) Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 414 the following new section: Ante, p. 925.

"SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTION UNDER QUALIFIED PLANS.

"(a) GENERAL RULE.—

"(1) TRUSTS.—A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if— Ante, p. 935.

"(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b),

"(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any

participant for any taxable year exceed the limitation of subsection (c), or

"(C) in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (g).

"(2) SECTION APPLIES TO CERTAIN ANNUITIES AND ACCOUNTS.—in the case of—

"(A) an employee annuity plan described in section 403 (a),

Ante, p. 969.

"(B) an annuity contract described in section 403(b),

Ante, p. 940.

"(C) an individual retirement account described in section 408(a),

Ante, p. 959.

"(D) an individual retirement annuity described in section 408(b),

"(E) a plan described in section 405(a), or

26 USC 405.

"(F) a retirement bond described in section 409,

Ante, p. 964.

such contract, annuity plan, account, annuity, plan, or bond shall not be considered to be described in section 403(a), 403(b), 405(a), 408(a), 408(b), or 409, as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403 (b)(2).

"(b) LIMITATION FOR DEFINED BENEFIT PLANS.—

"(1) IN GENERAL.—Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

"(A) $75,000, or

"(B) 100 percent of the participant's average compensation for his high 3 years.

"(2) ANNUAL BENEFIT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'annual benefit' means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402 (a)(5), 403(a)(4), 408(d)(3), and 409(b)(3)(C) are made.

Ante, pp. 968, 969.

"(B) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFIT.—If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3) and 409 (b)(3)(C)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and

survivor annuity (as defined in section 401(a)(11)(H)(iii)) shall not be taken into account. Ante, p. 935.

"(C) ADJUSTMENT TO $75,000 LIMIT WHERE BENEFIT BEGINS BEFORE AGE 55.—If the retirement income benefit under the plan begins before age 55, the determination as to whether the $75,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to such a benefit beginning at age 55.

"(3) AVERAGE COMPENSATION FOR HIGH 3 YEARS.—For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant both was an active participant in the plan and had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for 'compensation from the employer' the following: 'the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'. 26 USC 401.

"(4) TOTAL ANNUAL BENEFITS NOT IN EXCESS OF $10,000.—Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—

"(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed $10,000 for the plan year, or for any prior plan year, and

"(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

"(5) REDUCTION FOR SERVICE LESS THAN 10 YEARS.—In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10.

"(6) COMPUTATION OF BENEFITS AND CONTRIBUTIONS.—The computation of—

"(A) benefits under a defined contribution plan, for purposes of section 401(a)(4), Ante, p. 938.

"(B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4), and

"(C) contributions and benefits provided for a participant in a plan described in section 414(k), for purposes of this section Ante, p. 925.

shall not be made on a basis inconsistent with regulations prescribed by the Secretary or his delegate.

"(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

"(1) IN GENERAL.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of

88 STAT. 982

paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

"(A) $25,000, or

"(B) 25 percent of the participant's compensation.

"(2) ANNUAL ADDITION.—For purposes of paragraph (1), the term 'annual addition' means the sum for any year of—

"(A) employer contributions,

"(B) the lesser of—

"(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

"(ii) one-half of the employee contributions, and

"(C) forfeitures.

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3), and 409(b)(3)(C)).

Ante, pp. 968, 969, 959, 964.

"(3) PARTICIPANT'S COMPENSATION.—For purposes of paragraph (1), the term 'participant's compensation' means the compensation of the participant from the employer for the year. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for 'compensation of the participant from the employer' the following: 'the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'.

26 USC 401.

"(4) SPECIAL ELECTION FOR SECTION 403(b) CONTRACTS PURCHASED BY EDUCATIONAL INSTITUTIONS, HOSPITALS, AND HOME HEALTH SERVICE AGENCIES.—

"(A) In the case of amounts contributed for an annuity contract described in section 403(b) for the year in which occurs a participant's separation from the service with an educational institution, a hospital, or a home health service agency, at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the amount of the exclusion allowance which would be determined under section 403(b)(2) (without regard to this section) for the participant's taxable year in which such separation occurs if the participant's years of service were computed only by taking into account his service for the employer during the period of years (not exceeding ten) ending on the date of such separation.

Post, p. 986.

"(B) In the case of amounts contributed for an annuity contract described in section 403(b) for any year in the case of a participant who is an employee of an educational institution, a hospital, or a home health service agency, at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the least of—

Ante, p. 940.

"(i) 25 percent of the participant's includible compensation (as defined in section 403(b)(3)) plus $4,000,

"(ii) the amount of the exclusion allowance determined for the year under section 403(b)(2), or

"(iii) $15,000.

"(C) In the case of amounts contributed for an annuity contract described in section 403(b) for any year for a participant who is an employee of an educational institution, a hospital, or a home health service agency, at the election of the participant the provisions of section 403(b)(2)(A) shall not apply.

"(D) (i) The provisions of this paragraph apply only if the participant elects its application at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under subparagraph (A) by any participant. A participant who elects to have the provisions of subparagraph (A), (B), or (C) of this paragraph apply to him may not elect to have any other subparagraph of this paragraph apply to him. Any election made under this paragraph is irrevocable.

"(ii) For purposes of this paragraph the term 'educational institution' means an educational institution as defined in section 151(e)(4).

"Educational institution."

"(iii) For purposes of this paragraph the term 'home health service agency' means an organization described in subsection 501(c)(3) which is exempt from tax under section 501(a) and which has been determined by the Secretary of Health, Education, and Welfare to be a home health agency (as defined in section 1861(o) of the Social Security Act).

79 Stat. 313; 86 Stat. 1413. 42 USC 1395x.

"(d) Cost-of-Living Adjustments.—

"(1) In general.—The Secretary or his delegate shall adjust annually—

"(A) the $75,000 amount in subsection (b)(1)(A),

"(B) the $25,000 amount in subsection (c)(1)(A), and

"(C) in the case of a participant who is separated from service, the amount taken into account under subsection (b)(1)(B),

for increases in the cost of living in accordance with regulations prescribed by the Secretary or his delegate. Such regulations shall provide for adjustment procedures which are similar to the procedures used to adjust primary insurance amounts under section 215(i)(2)(A) of the Social Security Act.

42 USC 415.

"(2) Base periods.—The base period taken into account—

"(A) for purposes of subparagraphs (A) and (B) of paragraph (1) is the calendar quarter beginning October 1, 1974, and

"(B) for purposes of subparagraph (C) of paragraph (1) is the last calendar quarter of the calendar year before the calendar year in which the participant is separated from service.

"(e) Limitation in Case of Defined Benefit Plan and Defined Contribution Plan for Same Employee.—

"(1) In general.—In any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any year may not exceed 1.4.

"(2) Defined benefit plan fraction.—For purposes of this subsection, the defined benefit plan fraction for any year is a fraction—

"(A) the numerator of which is the projected annual benefit of the participant under the plan (determined as of the close of the year), and

"(B) the denominator of which is the projected annual benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsection (b).

"(3) Defined contribution plan fraction.—For purposes of this subsection, the defined contribution plan fraction for any year is a fraction—

"(A) the numerator of which is the sum of the annual additions to the participant's account as of the close of the year, and

"(B) the denominator of which is the sum of the maximum amount of annual additions to such account which could have been made under subsection (c) for such year and for each prior year of service with the employer.

"(4) SPECIAL TRANSITION RULES FOR DEFINED CONTRIBUTION FRACTION.—In applying paragraph (3) with respect to years beginning before January 1, 1976—

"(A) the aggregate amount taken into account under paragraph (3)(A) may not exceed the aggregate amount taken into account under paragraph (3)(B), and

"(B) the amount taken into account under subsection (c)(2)(B)(i) for any year concerned is an amount equal to—

"(i) the excess of the aggregate amount of employee contributions for all years beginning before January 1, 1976, during which the employee was an active participant of the plan, over 10 percent of the employee's aggregate compensation for all such years, multiplied by

"(ii) a fraction the numerator of which is 1 and the denominator of which is the number of years beginning before January 1, 1976, during which the employee was an active participant in the plan.

Employee contributions made on or after October 2, 1973, shall be taken into account under subparagraph (B) of the preceding sentence only to the extent that the amount of such contributions does not exceed the maximum amount of contributions permissible under the plan as in effect on October 2, 1973.

26 USC 403.
Ante, p. 959.

"(5) SPECIAL RULES FOR SECTIONS 403(b) and 408.—For purposes of this subsection, any annuity contract described in section 403(b) (except in the case of a participant who has elected under subsection (c)(4)(D) to have the provisions of subsection (c)(4)(C) apply), any individual retirement account described in section 408(a), any individual retirement annuity described in section 408(b), and any retirement bond described in section 409, for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). In the case of any annuity contract described in section 403(b), the amount of the contribution disqualified by reason of subsection (g) shall reduce the exclusion allowance as provided in section 403(b)(2).

Ante, p. 925.

"(f) COMBINING OF PLANS.—

"(1) IN GENERAL.—For purposes of applying the limitations of subsections (b), (c), and (e)—

"(A) all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and

"(B) all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.

"(2) ANNUAL COMPENSATION TAKEN INTO ACCOUNT FOR DEFINED BENEFIT PLANS.—If the employer has more than one defined benefit plan—

"(A) subsection (b)(1)(B) shall be applied separately with respect to each such plan, but

"(B) in applying subsection (b)(1)(B) to the aggregate of such defined benefit plans for purposes of this subsection, the high 3 years of compensation taken into account shall be the period of consecutive calendar years (not more than 3) during which the individual had the greatest aggregate compensation from the employer.

"(g) AGGREGATION OF PLANS.—The Secretary or his delegate, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary or his delegate, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsections (e) and (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

Ante, p. 925.

"(h) 50 PERCENT CONTROL.—For purposes of applying subsections (b) and (c) of section 414 to this section, the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563(a)(1).

26 USC 1563.

"(i) RECORDS NOT AVAILABLE FOR PAST PERIODS.—Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary or his delegate may by regulations prescribe alternative methods for determining the amounts to be taken into account for such period.

"(j) REGULATIONS; DEFINITION OF YEAR.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section, including, but not limited to, regulations defining the term 'year' for purposes of any provision of this section.

"(k) SPECIAL RULES.—

"(1) DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN.—For purposes of this title, the term 'defined contribution plan' or 'defined benefit plan' means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

"(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

"(B) an annuity plan described in section 403(a),

"(C) a qualified bond purchase plan described in section 405(a),

"(D) an annuity a contract described in section 403(b),

"(E) an individual retirement account described in section 408(a),

"(F) an individual retirement annuity described in section 408(b), or

"(G) an individual retirement bond described in section 409.".

(3) SPECIAL RULE FOR CERTAIN PLANS IN EFFECT ON DATE OF ENACTMENT.—In any case in which, on the date of enactment of this Act, an individual is a participant in both a defined benefit

26 USC 415 note.

plan and a defined contribution plan maintained by the same employer, and the sum of the defined benefit plan fraction and the defined contribution plan fraction for the year during which such date occurs exceeds 1.4, the sum of such fractions may continue to exceed 1.4 if—

(A) the defined benefit plan fraction is not increased, by amendment of the plan or otherwise, after the date of enactment of this Act, and

(B) no contributions are made under the defined contribution plan after such date.

A trust which is part of a pension, profit-sharing, or stock bonus plan described in the preceding sentence shall not be treated as not constituting a qualified trust under section 401(a) of the Internal Revenue Code of 1954 on account of the provisions of section 415(e) of such Code, as long as it is described in the preceding sentence of this subsection.

26 USC 401.
Ante, p. 979.

(b) LIMIT ON EMPLOYER DEDUCTIONS.—The second sentence of section 404(a)(3)(A) (relating to limits on deductible contributions) is amended by striking out "beneficiaries under the plan." and inserting in lieu thereof "beneficiaries under the plan, but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan.".

26 USC 404.

(c) CERTAIN ANNUITY AND BOND PURCHASE PLANS.—

(1) Section 404(a)(2) (relating to the general rule for deduction for employee annuities) is amended by striking out "(15)" and inserting in lieu thereof "(15), (16), and (19)" and by striking out "(a)(9) and (10)" and inserting in lieu thereof "(a)(9), (10), (17), and (18)".

(2) Section 405(a)(1) (relating to requirements for qualified bond purchase plans) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (16), and (19)".

(3) Section 805(d)(1)(C) (relating to pension plan reserves) is amended by striking out "and (15)" and inserting in lieu thereof "(15), (16), and (19)".

(4) Section 403(b)(2) (relating to exclusion allowance) is amended to read as follows:

"(2) EXCLUSION ALLOWANCE.—

"(A) IN GENERAL.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

"(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

"(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

"(B) ELECTION TO HAVE ALLOWANCE DETERMINED UNDER SECTION 415 RULES.—In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, and home health service agencies) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415) by his employer under a plan described in section 403(a) if the

annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.".

(d) EFFECTIVE DATE.— 26 USC 415 note.

(1) GENERAL RULE.—The amendments made by this section shall apply to years beginning after December 31, 1975. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.

(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan before October 3, 1973, if—

(A) the annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1954) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on the earlier of (i) October 2, 1973, or (ii) the date on which he separated from the service of the employer, Ante, p. 979.

(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date, and

(C) in the case of a participant who separated from the service of the employer prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from the service,

then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1954.

SEC. 2005. TAXATION OF CERTAIN LUMP SUM DISTRIBUTIONS.

(a) TREATMENT OF TOTAL DISTRIBUTIONS.—Section 402(e) (relating to certain plan terminations) is amended to read as follows: 26 USC 402.

"(e) TAX ON LUMP SUM DISTRIBUTIONS.—

(1) IMPOSITION OF SEPARATE TAX ON LUMP SUM DISTRIBUTIONS.—

"(A) SEPARATE TAX.—There is hereby imposed a tax (in the amount determined under subparagraph (B)) on the ordinary income portion of a lump sum distribution.

"(B) AMOUNT OF TAX.—The amount of tax imposed by subparagraph (A) for any taxable year shall be an amount equal to the amount of the initial separate tax for such taxable year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the taxable year and the denominator of which is the total taxable amount of such distribution for such year.

"(C) INITIAL SEPARATE TAX.—The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to one-tenth of the excess of—

"(i) the total taxable amount of the lump sum distribution for the taxable year, over

"(ii) the minimum distribution allowance.

"(D) MINIMUM DISTRIBUTION ALLOWANCE.—For purposes of this paragraph, the minimum distribution allowance for the taxable year is an amount equal to—

"(i) the lesser of $10,000 or one-half of the total taxable amount of the lump sum distribution for the taxable year, reduced (but not below zero) by

"(ii) 20 percent of the amount (if any) by which such total taxable amount exceeds $20,000.

"(E) LIABILITY FOR TAX.—The recipient shall be liable for the tax imposed by this paragraph.

"(2) MULTIPLE DISTRIBUTIONS AND DISTRIBUTIONS OF ANNUITY CONTRACTS.—In the case of any recipient of a lump sum distribution for the taxable year with respect to whom during the 6-taxable-year period ending on the last day of the taxable year there has been one or more other lump sum distributions after December 31, 1973, or if the distribution (or any part thereof) is an annuity contract, in computing the tax imposed by paragraph (1)(A), the total taxable amounts of all such distributions during such 6-taxable-year period shall be aggregated, but the amount of tax so computed shall be reduced (but not below zero) by the sum of—

"(A) the amount of the tax imposed by paragraph (1)(A) paid with respect to such other distributions, plus

"(B) that portion of the tax on the aggregated total taxable amounts which is attributable to annuity contracts.

For purposes of this paragraph, a beneficiary of a trust to which a lump sum distribution is made shall be treated as the recipient of such distribution if the beneficiary is an employee (including an employee within the meaning of section 401(c)(1)) with respect to the plan under which the distribution is made or if the beneficiary is treated as the owner of such trust for purposes of subpart E of part I of subchapter J. In the case of the distribution of an annuity contract, the taxable amount of such distribution shall be deemed to be the current actuarial value of the contract, determined on the date of such distribution. In the case of a lump sum distribution with respect to any individual which is made only to two or more trusts, the tax imposed by paragraph (1)(A) shall be computed as if such distribution was made to a single trust, but the liability for such tax shall be apportioned among such trusts according to the relative amounts received by each. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

26 USC 401.

26 USC 671.

Regulations.

"(3) ALLOWANCE OF DEDUCTION.—The ordinary income portion of a lump sum distribution for the taxable year shall be allowed as a deduction from gross income for such taxable year, but only to the extent included in the taxpayer's gross income for such taxable year.

"(4) DEFINITIONS AND SPECIAL RULES.—

"(A) LUMP SUM DISTRIBUTION.—For purposes of this section and section 403, the term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

26 USC 403.

"(i) on account of the employee's death,

"(ii) after the employee attains age 59½,

"(iii) on account of the employee's separation from the service, or

"(iv) after the employee has become disabled (within the meaning of section 72(m)(7)) 26 USC 72.

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this subparagraph, a distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution. For purposes of this subparagraph, a distribution to two or more trusts shall be treated as a distribution to one recipient.

"(B) Election of lump sum treatment.—For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.

"(C) Aggregation of certain trusts and plans.—For purposes of determining the balance to the credit of an employee under subparagraph (A)—

"(i) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

"(ii) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

"(D) Total taxable amount.—For purposes of this section and section 403, the term 'total taxable amount' means, with respect to a lump sum distribution, the amount of such distribution which exceeds the sum of—

"(i) the amounts considered contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, and

"(ii) the net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.

"(E) Ordinary income portion.—For purposes of this section, the term 'ordinary income portion' means, with

respect to a lump sum distribution, so much of the total taxable amount of such distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(i) the numerator of which is the number of calendar years of active participation by the employee in such plan after December 31, 1973, and

"(ii) the denominator of which is the number of calendar years of active participation by the employee in such plan.

"(F) EMPLOYEE.—For purposes of this subsection and subsection (a)(2), except as otherwise provided in subparagraph (A), the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) and the employer of such individual is the person treated as his employer under section 401(c)(4).

26 USC 401.

"(G) COMMUNITY PROPERTY LAWS.—The provisions of this subsection, other than paragraph (3), shall be applied without regard to community property laws.

"(H) MINIMUM PERIOD OF SERVICE.—For purposes of this subsection (but not for purposes of subsection (a)(2) or section 403(a)(2)(A)), no amount distributed to an employee from or under a plan may be treated as a lump sum distributed under subparagraph (A) unless he has been a participant in the plan for 5 or more taxable years before the taxable year in which such amounts are distributed.

"(I) AMOUNTS SUBJECT TO PENALTY.—This subsection shall not apply to amounts described in clause (ii) of subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

"(J) UNREALIZED APPRECIATION OF EMPLOYER SECURITIES.—In the case of any distribution including securities of the employer corporation which, without regard to the requirement of subparagraph (H), would be treated as a lump sum distribution under subparagraph (A), there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation so distributed. In the case of any such distribution or any lump sum distribution including securities of the employer corporation, the amount of net unrealized appreciation of such securities and the resulting adjustments to the basis of such securities shall be determined under regulations prescribed by the Secretary or his delegate.

"(K) SECURITIES.—For purposes of this subsection, the terms 'securities' and 'securities of the employer corporation' have the respective meanings provided by subsection (a)(3)."

(b) PHASEOUT OF CAPITAL GAINS TREATMENT.—

(1) IN GENERAL.—Section 402(a)(2) (relating to capital gains treatment for certain distributions) is amended to read as follows:

"(2) CAPITAL GAINS TREATMENT FOR PORTION OF LUMP SUM DISTRIBUTIONS.—In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e)(4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(A) the numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

"(B) the denominator of which is the number of calendar years of active participation by the employee in such plan, shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction described in this paragraph and the fraction under subsection (e)(4)(E), the Secretary or his delegate may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B), but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph."

(2) AMENDMENT OF SECTION 403.—That part of paragraph (2) of section 403(a) which follows clause (ii) of subparagraph (A) thereof is amended to read as follows:

"(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

Ante, p. 987.

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

Ante, p. 990.

"(B) CROSS REFERENCE.—

"For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 402(a)(3) is repealed.

Repeals. 26 USC 402.

(2) Paragraph (5) (as in effect on December 31, 1973) of section 402(a) is repealed.

(3) Section 72 is amended by striking out subsection (n) thereof and by redesignating subsections (o) and (p) as (n) and (o), respectively.

(4) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3) are each amended by inserting after "tax preferences)," the following: "section 402(e) (relating to tax on lump sum distributions),".

(5) The third sentence of section 901(a) is amended by inserting "against the tax imposed by section 402(e) (relating to tax on lump sum distributions)," before "against the tax imposed by section 531".

(6) Subsection 1304(b)(2) (relating to special rules) is amended by striking out paragraph (2) and by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

(7) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by inserting before "531" the following: "402(e),".

26 USC 871, 877.
Ante, p. 987.
Ante, p. 959.

(8) Sections 871(b)(1) and 877(b) are each amended by inserting ", 402(e)(1)," after "section 1".

(9) Section 62 (defining adjusted gross income), is amended by inserting after paragraph (10) the following new paragraph:

"(11) CERTAIN PORTION OF LUMP-SUM DISTRIBUTIONS FROM PENSION PLANS TAXED UNDER SECTION 402(e).—The deduction allowed by section 402(e)(3)."

(10) Section 122(b)(2) (relating to consideration for the contract) is amended by striking out "72(o)" and inserting "72(n)".

(11) Section 405(e) (relating to capital gains treatment and limitation of tax not to apply to bonds distributed by trusts) is amended by striking out "Section 72(n) and section 402(a)(2)" and inserting "Subsections (a)(2) and (e) of section 402".

(12) Section 406(c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72(n), section 402(a)(2)" and inserting "subsections (a)(2) and (e) of section 402".

(13) Section 407(c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72(n), section 402(a)(2)" and inserting "subsections (a)(2) and (e) of section 402".

(14) Section 1348(b)(1) (relating to earned income) is amended by striking out "72(n), 402(a)(2)" and inserting "402(a)(2), 402(e)".

(15) Section 101(b)(2)(B) is amended by striking out "total distributions payable (as defined in section 402(a)(3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death" and inserting in lieu thereof "a lump sum distribution (as defined in section 402(e)(4))".

26 USC 402 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.

26 USC 401 note.

SEC. 2006. SALARY REDUCTION REGULATIONS.

(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1977, to an employees' trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

(b) ADMINISTRATION IN THE CASE OF CERTAIN QUALIFIED PENSION OR PROFIT-SHARING PLANS, ETC., IN EXISTENCE ON JUNE 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1977, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

(1) provided for contributions to an employees' trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or

(2) was maintained as part of an arrangement under which an

employee was permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954.

(c) ADMINISTRATION OF LAW WITH RESPECT TO CERTAIN PLANS.—

(1) ADMINISTRATION IN THE CASE OF PLANS DESCRIBED IN SUBSECTION (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

(B) in the manner in which such law was administered before January 1, 1972.

(2) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

(A) Revenue Ruling 56–497 (1956—2 C.B. 284),

(B) Revenue Ruling 63–180 (1963—2 C.B. 189), and

(C) Revenue Ruling 68–89 (1968—1 C.B. 402).

(d) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after December 31, 1976—

(1) for purposes of chapter 1 of the Internal Revenue Code of 1954 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1977; and 26 USC 1.

(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form. 26 USC 3101. 26 USC 3401.

(e) SALARY REDUCTION REGULATIONS DEFINED.—For purposes of this section, the term "salary reduction regulations" means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a), or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954). 26 USC 401. 26 USC 1 et seq.

SEC. 2008. CERTAIN ARMED FORCES SURVIVOR ANNUITIES.

(a) TREATMENT OF CERTAIN PARTICIPANTS IN THE PLAN.—Section 404(c) (relating to certain negotiated plans) is amended by inserting after the first sentence the following new sentences: "For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence— 26 USC 404.

88 STAT. 994

"(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

26 USC 401.

"(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

"(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection.".

(b) Other Amendments to Section 404(c)(1).—

(1) Paragraph (1) of the first sentence of section 404(c) is amended by striking out "and pensions" and inserting in lieu thereof "or pensions".

(2) The last sentence of section 404(c) is amended by striking out "This subsection" and inserting in lieu thereof "The first and third sentences of this subsection".

26 USC 404 note.

(c) Effective Date.—The amendments made by this section shall apply to taxable years ending on or after June 30, 1972.

SEC. 2007. RULES FOR CERTAIN NEGOTIATED PLANS.

(a) In General.—Section 122(a) (relating to certain reduced uniformed services retired pay) is amended to read as follows:

"(a) General rule.—In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code.".

10 USC 1431.

(b) Technical Amendments.—

(1) Section 122(b)(2) is amended by striking out "section 1438" in subparagraph (B) and inserting in lieu thereof "section 1438 or 1452(d)".

Ante, p. 991.

(2) Section 72(o) is amended by inserting after "Plan" in the heading of such section "or Survivor Benefit Plan".

(3) Section 101(b)(2)(D) is amended by striking out "if the individual who made the election under such chapter" and inserting in lieu thereof "if the member or former member of the uniformed services by reason of whose death such annuity is payable".

(4) Section 2039(c) is amended by striking out "section 1438" in the last sentence and inserting in lieu thereof "section 1438 or 1452(d)".

26 USC 122 note.

(c) Effective Dates.—The amendments made by this section apply to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) apply with respect to individuals dying on or after such date.

TITLE III—JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

Subtitle A—Jurisdiction, Administration, and Enforcement

PROCEDURES IN CONNECTION WITH THE ISSUANCE OF CERTAIN DETERMINATION LETTERS BY THE SECRETARY OF THE TREASURY

SEC. 3001. (a) Before issuing an advance determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954, the Secretary of the Treasury shall require the person applying for the determination to provide, in addition to any material and information necessary for such determination, such other material and information as may reasonably be made available at the time such application is made as the Secretary of Labor may require under title I of this Act for the administration of that title. The Secretary of the Treasury shall also require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who qualifies as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of such Code (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of the application for a determination.

29 USC 1201.

26 USC 401.

Ante, p. 832.

Ante, p. 949.

(b)(1) Whenever an application is made to the Secretary of the Treasury for a determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954, the Secretary shall upon request afford an opportunity to comment on the application at any time within 45 days after receipt thereof to—

(A) any employee or class of employee qualifying as an interested party within the meaning of the regulations referred to in subsection (a).

(B) the Secretary of Labor, and

(C) the Pension Benefit Guaranty Corporation.

(2) The Secretary of Labor may not request an opportunity to comment upon such an application unless he has been requested in writing to do so by the Pension Benefit Guaranty Corporation or by the lesser of—

(A) 10 employees, or

(B) 10 percent of the employees

who qualify as interested parties within the meaning of the regulations referred to in subsection (a). Upon receiving such a request, the Secretary of Labor shall furnish a copy of the request to the Secretary of the Treasury within 5 days (excluding Saturdays, Sundays, and legal public holidays (as set forth in section 6103 of title 5, United States Code)).

80 Stat. 515; 82 Stat. 250.

(3) Upon receiving such a request from the Secretary of Labor, the Secretary of the Treasury shall furnish to the Secretary of Labor such information held by the Secretary of the Treasury relating to the application as the Secretary of Labor may request.

(4) The Secretary of Labor shall, within 30 days after receiving a request from the Pension Benefit Guaranty Corporation or from the

necessary number of employees who qualify as interested parties, notify the Secretary of the Treasury, the Pension Benefit Guaranty Corporation, and such employees with respect to whether he is going to comment on the application to which the request relates and with respect to any matters raised in such request on which he is not going to comment. If the Secretary of Labor indicates in the notice required under the preceding sentence that he is not going to comment on all or part of the matters raised in such request, the Secretary of the Treasury shall afford the corporation, and such employees, an opportunity to comment on the application with respect to any matter on which the Secretary of Labor has declined to comment.

(c) The Pension Benefit Guaranty Corporation and, upon petition of a group of employees referred to in subsection (b)(2), the Secretary of Labor, may intervene in any action brought for declaratory judgment under section 7476 of the Internal Revenue Code of 1954 in accordance with the provisions of such section. The Pension Benefit Guaranty Corporation is permitted to bring an action under such section 7476 under such rules as may be prescribed by the United States Tax Court.

Ante, p. 949.

(d) If the Secretary of the Treasury determines that a plan or trust to which this section applies meets the applicable requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 and issues a determination letter to the applicant, the Secretary shall notify the Secretary of Labor of his determination and furnish such information and material relating to the application and determination held by the Secretary of the Treasury as the Secretary of Labor may request for the proper administration of title I of this Act. The Secretary of Labor shall accept the determination of the Secretary of the Treasury as prima facie evidence of initial compliance by the plan with the standards of parts 2, 3, and 4 of subtitle B of title I of this Act. If an application for such a determination is withdrawn, or if the Secretary of the Treasury issues a determination that the plan or trust does not meet the requirements of such part I, the Secretary shall notify the Secretary of Labor of the withdrawal or determination.

26 USC 401.

Ante, p. 832.

(e) This section does not apply with respect to an application for any plan received by the Secretary of the Treasury before the date on which section 410 of the Internal Revenue Code of 1954 applies to the plan, or on which such section will apply if the plan is determined by the Secretary to be a qualified plan.

Ante, p. 898.

PROCEDURES WITH RESPECT TO CONTINUED COMPLIANCE WITH REQUIREMENTS RELATING TO PARTICIPATION, VESTING, AND FUNDING STANDARDS

SEC. 3002. (a) In carrying out the provisions of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 with respect to whether a plan or a trust meets the requirements of section 410 (a) or 411 of such Code (relating to minimum participation standards and minimum vesting standards, respectively), the Secretary of the Treasury shall notify the Secretary of Labor when the Secretary of the Treasury issues a preliminary notice of intent to disqualify related to the plan or trust or, if earlier, at the time of commencing any proceeding to determine whether the plan or trust satisfies such requirements. Unless the Secretary of the Treasury finds that the collection of a tax imposed under the Internal Revenue Code of 1954 is in jeopardy, the Secretary of the Treasury shall not issue a determination that the plan or trust does not satisfy the requirements of such section until

29 USC 1202.

Ante, p. 901.

26 USC 1 et seq.

the expiration of a period of 60 days after the date on which he notifies the Secretary of Labor of such review. The Secretary of the Treasury, in his discretion, may extend the 60-day period referred to in the preceding sentence if he determines that such an extension would enable the Secretary of Labor to obtain compliance with such requirements by the plan within the extension period. Except as otherwise provided in this Act, the Secretary of Labor shall not generally apply part 2 of title I of this Act to any plan or trust subject to sections 410(a) and 411 of such Code, but shall refer alleged general violations of the vesting or participation standards to the Secretary of the Treasury. (The preceding sentence shall not apply to matters relating to individuals benefits.)

Ante, p. 852.

Ante, p. 898, 901.

(b) Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4971 of the Internal Revenue Code of 1954 (relating to taxes on the failure to meet minimum funding standards), the Secretary of the Treasury shall notify the Secretary of Labor before sending a notice of deficiency with respect to any tax imposed under that section on an employer. and, in accordance with the provisions of subsection (d) of that section, afford the Secretary of Labor an opportunity to comment on the imposition of the tax in the case. The Secretary of the Treasury may waive the imposition of the tax imposed under section 4971(b) of such Code in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be commenced expeditiously with respect to whether the tax imposed under section 4971 of such Code should be applied with respect to any employer to which the request relates. The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 412 of the Internal Revenue Code of 1954 (relating to minimum funding standards) and with respect to the funding standards applicable under title I of this Act in order to coordinate the rules applicable under such standards.

Notice of deficiency.

Ante, p. 920.

Waiver.

Ante, p. 914.

(c) Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of the Internal Revenue Code of 1954 (relating to minimum participation standards, minimum vesting standards, and minimum funding standards, respectively) shall also apply to the minimum participation, vesting, and funding standards set forth in parts 2 and 3 of subtitle B of title I of this Act. Except as otherwise expressly provided in this Act, the Secretary of Labor shall not prescribe other regulations under such parts, or apply the regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, 412 of the Internal Revenue Code of 1954 and applicable to the minimum participation, vesting, and funding standards under such parts in a manner inconsistent with the way such regulations apply under sections 410(a), 411, and 412 of such Code.

Ante, p. 852, 868.

(d) The Secretary of Labor and the Pension Benefit Guaranty Corporation, before filing briefs in any case involving the construction or application of minimum participation standards, minimum vesting standards, or minimum funding standards under title I of this Act, shall afford the Secretary of the Treasury a reasonable opportunity to review any such brief. The Secretary of the Treasury shall have the right to intervene in any such case.

Review of briefs.

PROCEDURES IN CONNECTION WITH PROHIBITED TRANSACTIONS

29 USC 1203.

SEC. 3003. (a) Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) the Secretary of the Treasury shall, in accordance with the provisions of subsection (h) of such section, notify the Secretary of Labor before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b) of such section, and, in accordance with the provisions of subsection (h) of such section, afford the Secretary an opportunity to comment on the imposition of the tax in any case. The Secretary of the Treasury shall have authority to waive the imposition of the tax imposed under section 4975(b) in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be carried out with respect to whether the tax imposed by section 4975 of such Code should be applied to any person referred to in the request.

Ante, p. 971.

(b) The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) and with respect to the provisions of title I of this Act relating to prohibited transactions and exemptions therefrom in order to coordinate the rules applicable under such standards.

Ante, p. 832.

(c) Whenever the Secretary of Labor obtains information indicating that a party-in-interest or disqualified person is violating section 406 of this Act, he shall transmit such information to the Secretary of the Treasury.

Ante, p. 879.

COORDINATION BETWEEN THE DEPARTMENT OF THE TREASURY AND THE DEPARTMENT OF LABOR

29 USC 1204.

SEC. 3004. (a) Whenever in this Act or in any provision of law amended by this Act the Secretary of the Treasury and the Secretary of Labor are required to carry out provisions relating to the same subject matter (as determined by them) they shall consult with each other and shall develop rules, regulations, practices, and forms which, to the extent appropriate for the efficient administration of such provisions, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden of compliance with such provisions by plan administrators, employers, and participants and beneficiaries.

(b) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary of the Treasury and the Secretary of Labor may make such arrangements or agreements for cooperation or mutual assistance in the performance of their functions under this Act, and the functions of any such agency as they find to be practicable and consistent with law. The Secretary of the Treasury and the Secretary of Labor may utilize, on a reimbursable or other basis, the facilities or services, of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services, of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and

directed to cooperate with the Secretary of the Treasury and the Secretary of Labor and, to the extent permitted by law, to provide such information and facilities as they may request for their assistance in the performance of their functions under this Act. The Attorney General or his representative shall receive from the Secretary of the Treasury and the Secretary of Labor for appropriate action such evidence developed in the performance of their functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

Subtitle B—Joint Pension Task Force; Studies

PART 1—JOINT PENSION TASK FORCE

ESTABLISHMENT

SEC. 3021. The staffs of the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, the Joint Committee on Internal Revenue Taxation, and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall carry out the duties assigned under this title to the Joint Pension Task Force. By agreement among the chairmen of such Committees, the Joint Pension Task Force shall be furnished with office space, clerical personnel, and such supplies and equipment as may be necessary for the Joint Pension Task Force to carry out its duties under this title. 29 USC 1221.

DUTIES

SEC. 3022. (a) The Joint Pension Task Force shall, within 24 months after the date of enactment of this Act, make a full study and review of— 29 USC 1222.

(1) the effect of the requirements of section 411 of the Internal Revenue Code of 1954 and of section 203 of this Act to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements; Ante, pp. 901, 854.

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under title IV of this Act (relating to termination insurance) of plans established and maintained by small employers; Ante, p. 1003.

(4) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(5) such other matter as any of the committees referred to in section 3021 may refer to it. Supra.

(b) The Joint Pension Task Force shall report the results of its study and review to each of the committees referred to in section 3021.

PART 2—OTHER STUDIES

CONGRESSIONAL STUDY

SEC. 3031. (a) The Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of 29 USC 1231.

the United States, by any State (including the District of Columbia) or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Such study shall include an analysis of—

(1) the adequacy of existing levels of participation, vesting, and financing arrangements,

(2) existing fiduciary standards, and

(3) the necessity for Federal legislation and standards with respect to such plans.

In determining whether any such plan is adequately financed, each committee shall consider the necessity for minimum funding standards, as well as the taxing power of the government maintaining the plan.

Report to congressional committees.

(b) Not later than December 31, 1976, the Committee on Education and Labor and the Committee on Ways and Means shall each submit to the House of Representatives the results of the studies conducted under this section, together with such recommendations as they deem appropriate. The Committee on Finance and the Committee on Labor and Public Welfare shall each submit to the Senate the results of the studies conducted under this section together with such recommendations as they deem appropriate not later than such date.

PROTECTION FOR EMPLOYEES UNDER FEDERAL PROCUREMENT, CONSTRUCTION, AND RESEARCH CONTRACTS AND GRANTS

29 USC 1232.

SEC. 3032. (a) The Secretary of Labor shall, during the 2-year period beginning on the date of the enactment of this Act, conduct a full and complete study and investigation of the steps necessary to be taken to insure that professional, scientific, and technical personnel and others working in associated occupations employed under Federal procurement, construction, or research contracts or grants will, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts, grants, or procurement policies.

Report to Congress.

The Secretary of Labor shall report the results of his study and investigation to the Congress within 2 years after the date of the enactment of this Act. The Secretary of Labor is authorized, to the extent provided by law, to obtain the services of private research institutions and such other persons by contract or other arrangement as he determines necessary in carrying out the provisions of this section.

(b) In the course of conducting the study and investigation described in subsection (a), and in developing the regulations referred to in subsection (c), the Secretary of Labor shall consult—

(1) with appropriate professional societies, business organizations, and labor organizations, and

(2) with the heads of interested Federal departments and agencies.

Regulations.

(c) Within 1 year after the date on which he submits his report to the Congress under subsection (a), the Secretary of Labor shall, if he determines it to be feasible, develop regulations which will provide the protection of pension and retirement rights and benefits referred to in subsection (a).

(d)(1) Any regulations developed pursuant to subsection (c) shall take effect if, and only if—

(A) the Secretary of Labor, not later than the day which is 3 years after the date of the enactment of this Act, delivers a copy of such regulations to the House of Representatives and a copy to the Senate, and

(B) before the close of the 120-day period which begins on the day on which the copies of such regulations are delivered to the House of Representatives and to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval.

"Resolution of disapproval."

(2) For purposes of this subsection, the term "resolution of disapproval" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the —— does not favor the taking effect of the regulations transmitted to the Congress by the Secretary of Labor on ——", the first blank space therein being filled with the name of the resolving House and the second blank space therein being filled with the day and year.

(3) A resolution of disapproval in the House of Representatives shall be referred to the Committee on Education and Labor. A resolution of disapproval in the Senate shall be referred to the Committee on Labor and Public Welfare.

(4)(A) If the committee to which a resolution of disapproval has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval which has been referred to the committee.

Motion to discharge.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution of disapproval.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

Limited debate.

(B) Debate on the resolution of disapproval shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

Motion to postpone.

(6)(A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

Appeals.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

Regulations to congressional committees.

(7) Whenever the Secretary of Labor transmits copies of the regulations to the Congress, a copy of such regulations shall be delivered to

each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(8) The 120 day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(9) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in paragraph (2); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

Subtitle C—Enrollment of Actuaries

ESTABLISHMENT OF JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

29 USC 1241.

SEC. 3041. The Secretary of Labor and the Secretary of the Treasury shall, not later than the last day of the first calendar month beginning after the date of the enactment of this Act, establish a Joint Board for the Enrollment of Actuaries (hereinafter in this part referred to as the "Joint Board").

ENROLLMENT BY JOINT BOARD

Standards and qualifications. 29 USC 1242.

SEC. 3042. (a) The Joint Board shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans in which this Act applies and, upon application by any individual, shall enroll such individual if the Joint Board finds that such individual satisfies such standards and qualifications. With respect to individuals applying for enrollment before January 1, 1976, such standards and qualifications shall include a requirement for an appropriate period of responsible actuarial experience relating to pension plans. With respect to individuals applying for enrollment on or after January 1, 1976, such standards and qualifications shall include—

(1) education and training in actuarial mathematics and methodology, as evidenced by—

(A) a degree in actuarial mathematics or its equivalent from an accredited college or university,

(B) successful completion of an examination in actuarial mathematics and methodology to be given by the Joint Board, or

(C) successful completion of other actuarial examinations deemed adequate by the Joint Board, and

(2) an appropriate period of responsible actuarial experience. Notwithstanding the preceding provisions of this subsection, the Joint Board may provide for the temporary enrollment for the period end-

ing on January 1, 1976, of actuaries under such interim standards as it deems adequate.

(b) The Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this section if the Joint Board finds that such individual— Enrollment termination.

(1) has failed to discharge his duties under this Act, or

(2) does not satisfy the requirements for enrollment as in effect at the time of his enrollment.

The Joint Board may also, after notice and opportunity for hearing, suspend or terminate the temporary enrollment of an individual who fails to discharge his duties under this Act or who does not satisfy the interim enrollment standards.

AMENDMENT OF INTERNAL REVENUE CODE

SEC. 3043. Section 7701(a) of the Internal Revenue Code of 1954 (relating to definitions) is amended by adding at the end thereof the following new paragraph: 26 USC 7701.

"(35) ENROLLED ACTUARY.—The term 'enrolled actuary' means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974." Ante, p. 1002.

TITLE IV—PLAN TERMINATION INSURANCE

Subtitle A—Pension Benefit Guaranty Corporation

DEFINITIONS

SEC. 4001. (a) For purposes of this title, the term— 29 USC 1301.

(1) "administrator" means the person or persons described in paragraph (16) of section 3 of this Act; Ante, p. 833.

(2) "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(4) and (e)(3)(C) of such Code, as one employer) who has made contributions to or under a plan under which more than one employer makes contributions for each of— 26 USC 1563.

(A) the two immediately preceding plan years, or

(B) the second and third preceding plan years,

equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year;

(3) "multiemployer plan" means a multiemployer plan as defined in section 414(f) of the Internal Revenue Code of 1954 (as added by this Act but without regard to whether such section is in effect on the date of enactment of this Act); Ante, p. 925.

(4) "corporation", except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 4002; Post, p. 1004.

(5) "fund" means the appropriate fund established under section 4005; Post, p. 1009.

(6) "basic benefits" means benefits guaranteed under section 4022 other than under section 4022(c); and Post, p. 1016.

(7) "non-basic benefits" means benefits guaranteed under section 4022(c).

Post, p. 1016.

(b) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954. For purposes of this title, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer. The regulations prescribed under the preceding sentence shall be consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under section 414(c) of the Internal Revenue Code of 1954.

26 USC 401.

Ante, p. 925.

PENSION BENEFIT GUARANTY CORPORATION

Establishment.
29 USC 1302.

SEC. 4002. (a) There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this title, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this title, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this title applies, and

(3) to maintain premiums established by the corporation under section 4006 at the lowest level consistent with carrying out its obligations under this title.

Post, p. 1010.

Functions.

(b) To carry out the purposes of this title, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act and, in addition to any specific power granted to the corporation elsewhere in this title or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by the board of directors, bylaws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this Act;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this Act in any State or other jurisdiction without regard to qualification, licensing, or other requirements imposed by law in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein wherever situated;

(6) to appoint and fix the compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, and, to the extent desired by the corporation, require bonds for them and fix the penalty

thereof, and to appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code; 80 Stat. 416.

(7) to utilize the personnel and facilities of any other agency or department of the United States Government, with or without reimbursement, with the consent of the head of such agency or department; and

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the corporation by this Act.

(c) Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) In addition to the number of positions authorized by subsection (a), the Pension Benefit Guaranty Corporation is authorized, without regard to any other provision of this section, to place one position in the corporation at GS-18 and a total of 10 positions in the corporation at GS-16 and 17.".

(d) The board of directors of the corporation consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. Members of the board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board. The Secretary of Labor is the chairman of the board of directors. Membership.

(e) The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

(f) As soon as practicable, but not later than 180 days after the date of enactment of this Act, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. The chairman of the board shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less often than once each year. Bylaws and rules. Publication in Federal Register.

(g) (1) The corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of any fund established under section 4005), shall be exempt from all taxation now or hereafter imposed by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed. Tax exemption. Post, p. 1009.

(2) The receipts and disbursements of the corporation in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitations imposed by statute on budget outlays of the United States. Except as explicitly provided in this title, the United States is not liable for any obligation or liability incurred by the corporation.

(3) Section 101 of the Government Corporation Control Act (31 U.S.C. 846) is amended by inserting before the period a semicolon and the following: "and Pension Benefit Guaranty Corporation". 86 Stat. 1274.

(h) (1) There is established an advisory committee to the corporation, for the purpose of advising the corporation as to its policies and procedures relating to (A) the appointment of trustees in termination proceedings, (B) investment of moneys, (C) whether plans being terminated should be liquidated immediately or continued in operation under a trustee, and (D) such other issues as the corporation may Advisory committee. Establishment.

request from time to time. The advisory committee may also recommend persons for appointment as trustees in termination proceedings, make recommendations with respect to the investment of moneys in the funds, and advise the corporation as to whether a plan subject to being terminated should be liquidated immediately or continued in operation under a trustee.

Membership.

(2) The advisory committee consists of seven members appointed, from among individuals recommended by the board of directors, by the President. Of the seven members, two shall represent the interests of employee organizations, two shall represent the interests of employers who maintain pension plans, and three shall represent the interests of the general public. The President shall designate one member as chairman at the time of the appointment of that member.

Terms.

(3) Members shall serve for terms of 3 years each, except that, of the members first appointed, one of the members representing the interests of employee organizations, one of the members representing the interests of employers, and one of the members representing the interests of the general public shall be appointed for terms of 2 years each, one of the members representing the interests of the general public shall be appointed for a term of 1 year, and the other members shall be appointed to full 3-year terms. The advisory committee shall meet at least six times each year and at such other times as may be determined by the chairman or requested by any three members of the advisory committee.

(4) Members shall be chosen on the basis of their experience with employee organizations, with employers who maintain pension plans, with the administration of pension plans, or otherwise on account of outstanding demonstrated ability in related fields. Of the members serving on the advisory committee at any time, no more than four shall be affiliated with the same political party.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of a member of the advisory committee shall be filled in the manner in which that office was originally filled.

Compensation.

(6) The advisory committee shall appoint and fix the compensation of such employees as it determines necessary to discharge its duties, including experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. The corporation shall furnish to the advisory committee such professional, secretarial, and other services as the committee may request.

80 Stat. 416.

(7) Members of the advisory committee shall, for each day (including traveltime) during which they are attending meetings or conferences of the committee or otherwise engaged in the business of the committee, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

5 USC 5332 note.

86 Stat. 770.
5 USC app.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection.

INVESTIGATORY AUTHORITY; COOPERATION WITH OTHER AGENCIES; CIVIL ACTIONS

29 USC 1303.

SEC. 4003. (a) The corporation may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, and may require or permit any person to file with it a

statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any such investigation, or any other proceeding under this title, any member of the board of directors of the corporation, or any officer designated by the chairman, may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the corporation deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpena issued to, any person, the corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue an order requiring such person to appear before the corporation, or member or officer designated by the corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

(d) In order to avoid unnecessary expense and duplication of functions among government agencies, the corporation may make such arrangements or agreements for cooperation or mutual assistance in the performance of its functions under this title as is practicable and consistent with law. The corporation may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment. The head of each department, agency, or establishment of the United States shall cooperate with the corporation and, to the extent permitted by law, provide such information and facilities as it may request for its assistance in the performance of its functions under this title. The Attorney General or his representative shall receive from the corporation for appropriate action such evidence developed in the performance of its functions under this title as may be found to warrant consideration for criminal prosecution under the provisions of this or any other Federal law.

(e)(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to redress violations of the provisions of this title.

(2) Except as otherwise provided in this title, where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) The district courts of the United States shall have jurisdiction of actions brought by the corporation under this title without regard to the amount in controversy in any such action. Jurisdiction.

(4) Upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation is a party, it is the duty of that court to assign such case for hearing at the earliest practical date and to cause such case to be in every way expedited.

(5) In any action brought under this title, whether to collect premiums, penalties, and interest under section 4007 or for any other Post, p. 1013.

purpose, the court may award to the corporation all or a portion of the costs of litigation incurred by the corporation in connection with such action.

(f) Any participant, beneficiary, plan administrator, or employee adversely affected by any action of the corporation, or by a receiver or trustee appointed by the corporation, with respect to a plan in which such participant, beneficiary, plan administrator or employer has an interest, may bring an action against the corporation, receiver, or trustee in the appropriate court. For purposes of this subsection the term "appropriate court" means the United States district court before which proceedings under section 4041 or 4042 of this title are being conducted, or if no such proceedings are being conducted the United States district court for the district in which the plan has its principal office, or the United States district court for the District of Columbia. The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

TEMPORARY AUTHORITY FOR INITIAL PERIOD

29 USC 1304.

SEC. 4004. (a) Notwithstanding anything to the contrary in this title, the corporation may, upon receipt of notice that a plan is to be terminated or upon making a determination described in section 4042, appoint a receiver whose powers shall take effect immediately. The receiver shall assume control of such plan and its assets, protecting the interests of all interested persons during subsequent proceedings.

Post, p. 1021.

(b)(1) Within a reasonable time, not exceeding 20 days, after the appointment of a receiver under subsection (a), the corporation shall apply to an appropriate United States district court for a decree approving such appointment. The court to which application is made shall issue a decree approving such appointment unless it determines that such approval would not be in the best interests of the participants and beneficiaries of the plan.

(2) If the court to which application is made under paragraph (1) dismisses the application with prejudice, or if the corporation fails to apply for a decree under paragraph (1) within 20 days after the appointment of the receiver, the receiver shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of the 20 day period. The receiver shall not be liable to the plan or to any other person for his acts as receiver other than for willful misconduct, or for conduct in violation of the provisions of part 4 of subpart B of title I of this Act (except to the extent that the provisions of section 4042(d)(1)(A) provide otherwise).

Ante, p. 832.

(c) The corporation is authorized, as an alternative to appointing a receiver under subsection (a), to direct a plan administrator to apply to a district court of the United States for the appointment of a receiver to assume control of the plan and its assets for the purpose of protecting the interests of all interested persons until the plan can be terminated under the provisions of this title.

(d) A receiver appointed under this section has the powers of a trustee under section 4042(d)(1) (A) and (B), and shall report to the corporation and the court on the plan from time to time as required by either the corporation or the court. As soon as practicable after his appointment, a receiver appointed under this section shall determine whether the assets of the plan are sufficient to discharge when due all obligations of the plan with respect to benefits guaranteed under this title in accordance with the requirements of section 4044. If the determination of the receiver is approved by the corporation and the court, the receiver shall proceed as if he were a trustee appointed under section 4042.

Post, p. 1025.

(e) A receiver may not be appointed under this section more than 270 days after the date of enactment of this Act.

(f) In addition to its other powers under this title, for only the first 270 days after the date of enactment of this Act the corporation may—

(1) contract for printing without regard to the provisions of chapter 5 of title 44, United States Code, 44 USC 501.

(2) waive any notice required under this title if the corporation finds that a waiver is necessary or appropriate,

(3) extend the 90-day period referred to in section 4041(a) for an additional 90 days without the agreement of the plan administrator and without application to a court as required under section 4041(d), and Post, p. 1020.

(4) waive the application of the provisions of sections 4062, 4063, and 4064 to, or reduce the liability imposed under such sections on, any employer with respect to a plan terminating during that 270 day period if the corporation determines that such waiver or reduction is necessary to avoid unreasonable hardship in any case in which the employer was not able, as a practical matter, to continue the plan. Post, pp. 1029, 1030.

ESTABLISHMENT OF PENSION BENEFIT GUARANTY FUNDS

SEC. 4005. (a) There are established on the books of the Treasury of the United States four revolving funds to be used by the corporation in carrying out its duties under this title. One of the funds shall be used in connection with benefits guaranteed under sections 4022 and 4023 (but not non-basic benefits) with respect to plans other than multiemployer plans, one of the funds shall be used with respect to such benefits guaranteed under such sections (other than non-basic benefits) for multiemployer plans, one of the funds shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 4022, for plans which are not multiemployer plans, and the remaining fund shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 4022, for multiemployer plans. Whenever in this title reference is made to the term "fund" the reference shall be considered to refer to the appropriate fund established under this subsection. 29 USC 1305. Post, pp. 1016-1018.

(b)(1) Each fund established under this section shall be credited with the appropriate portion of—

(A) funds borrowed under subsection (c),

(B) premiums, penalties, interest, and charges collected under this title,

(C) the value of the assets of a plan administered under section 4042 by a trustee to the extent that they exceed the liabilities of such plan,

(D) the amount of any employer liability payments under subtitle D, to the extent that such payments exceed liabilities of the plan (taking into account all other plan assets),

(E) earnings on investments of the fund or on assets credited to the fund under this subsection, and

(F) receipts from any other operations under this title.

(2) Subject to the provisions of subsection (a), each fund shall be available—

(A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 4022,

(B) for making such payments as the corporation determines are necessary under section 4023,

(C) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best protect the interests of the corporation, participants in the plan being terminated, and other insured plans,

(D) to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c), and

(E) to pay the operational and administrative expenses of the corporation, including reimbursement of the expenses incurred by the Department of the Treasury in maintaining the funds, and the Comptroller General in auditing the corporation.

(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States but, until all borrowings under subsection (c) have been repaid, the obligations in which such excess moneys are invested may not yield a rate of return in excess of the rate of interest payable on such borrowings.

(c) The corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

84 Stat. 830.
31 USC 757c.

PREMIUM RATES

29 USC 1306.

SEC. 4006. (a)(1) The corporation shall prescribe such insurance premium rates and such coverage schedules for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this title. The premium rates charged by the corporation for any period shall be uniform for all plans, other than multiemployer plans insured by the corporation, with respect to basic benefits guaranteed by it under section 4022, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under such section. The premium rates charged by the corporation for any period for non-basic benefits guaranteed by it shall be uniform by category of non-basic benefit guaranteed, shall be based on the risk insured in each category, and shall reflect the experience of the corporation (including reasonably anticipated experience) in guaranteeing such benefits.

Post, p. 1016.

(2) The corporation shall maintain separate coverage schedules for—

(A) basic benefits guaranteed by it under section 4022 for—

(i) plans which are multiemployer plans, and

(ii) plans which are not multiemployer plans,

(B) employers insured under section 4023 against liability under subtitle D of this title, and Post, p. 1019.

(C) non-basic benefits.

Except as provided in paragraph (3), the corporation may revise such schedules whenever it determines that revised rates are necessary, but a revised schedule described in subparagraph (A) shall apply only to plan years beginning more than 30 days after the date on which the Congress approves such revised schedule by a concurrent resolution.

(3) Except as provided in paragraph (4), the rate for all plans for benefits guaranteed under section 4022 (other than non-basic benefits) with respect to plan years ending no more than 35 months after the effective date of this title is — Post, p. 1016.

(A) in the case of each plan which is not a multiemployer plan, an amount equal to one dollar for each individual who is a participant in such plan at any time during the plan year; and

(B) in the case of a multiemployer plan, an amount equal to fifty cents for each individual who is a participant in such plan at any time during such plan year.

The rate applicable under this paragraph to any plan the plan year of which does not begin on the date of enactment of this Act is a fraction of the rate described in the preceding sentence, the numerator of which is the number of months which end before the date on which the new plan year commences and the denominator of which is 12. The corporation is authorized to prescribe regulations under which the rate described in subparagraph (B) will not apply to the same participant in any multiemployer plan more than once for any plan year.

(4) Upon notification filed with the corporation not less than 60 days after the date on which the corporation publishes the rates applicable under paragraph (5), at the election of a plan the rate applicable to that plan with respect to the second full plan year to which this section applies beginning after the date of enactment of this Act shall be the greater of —

(A) an alternative rate determined under paragraph (5), or

(B) one-half of the rate applicable to the plan under paragraph (3).

In the case of a multiemployer plan, the rate prescribed by this paragraph (at the election of a plan) for the second full plan year is also the applicable rate for plan years succeeding the second full plan year and ending before the full plan year first commencing after December 31, 1977.

(5) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 4022 the corporation shall establish such rates and bases in coverage schedules for plan years beginning 24 months or more after the date of enactment of this Act in accordance with the provisions of this paragraph. The corporation shall publish the rate schedules first applicable under this paragraph in the Federal Register not later than 270 days after the date of enactment of this Act. Publication in Federal Register.

(A) The corporation may establish annual premiums composed of—

(i) a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent for plans which are not multiemployer plans and not in excess of 0.025 percent for multiemployer plans, and

(ii) an additional charge based on the rate applicable to the present value of the basic benefits of the plan which are guaranteed, determined separately for multiemployer plans and for plans which are not multiemployer plans.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level (determined separately for multiemployer plans and for plans which are not multiemployer plans) which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the premiums referred to in clause (i) of this subparagraph.

(B) The corporation may establish annual premiums based on—

(i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),

(ii) unfunded basic benefits guaranteed under this title, but such premium rates shall not exceed the limitations applicable under subparagraph (A)(i), or

(iii) total guaranteed basic benefits, but such premium rates may not exceed the rates determined under subparagraph (A)(ii).

If the corporation uses 2 or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

(6) The corporation shall by regulation define the terms "value of the assets" and "present value of the benefits of the plan which are guaranteed" in a manner consistent with the purposes of this title and the provisions of this section.

(b)(1) In order to place a revised coverage schedule (other than a schedule described in subsection (a)(2) (B) or (C) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Public Welfare of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the Congress favors the proposed revised coverage schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ———.", the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

(4) A resolution shall be referred to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Public Welfare of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other

resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) When a committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

PAYMENT OF PREMIUMS

SEC. 4007. (a) The plan administrator of each plan shall pay the premiums imposed by the corporation under this title with respect to that plan when they are due. Any employer obtaining contingent liability coverage under section 4023 shall pay the premiums imposed by the corporation under that section when due. Premiums under this title are payable at the time, and on an estimated, advance, or other basis, as determined by the corporation. Premiums imposed by this title on the date of enactment (applicable to that portion of any plan year during which such date occurs) are due within 30 days after such date. Premiums imposed by this title on the first plan year commencing after the date of enactment of this Act are due within 30 days after such plan year commences. Premiums shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure, or until a trustee is appointed pursuant to section 4042, whichever is earlier.

29 USC 1307.

Post, p. 1019.

Post, p. 1025.

(b) If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the plan administrator obtains a waiver from the corporation based upon a showing of substantial hardship arising

from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the plan administrator, but the corporation may not grant a waiver if it appears that the plan administrator will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of the Internal Revenue Code of 1954 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

26 USC 6601.

(c) If any plan administrator fails to pay a premium when due, the corporation is authorized to bring a civil action in any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or in which a defendant resides or is found for the recovery of the amount of the premium penalty, and interest, and process may be served in any other district. The district courts of the United States shall have jurisdiction over actions brought under this subsection by the corporation without regard to the amount in controversy.

(d) The corporation shall not cease to guarantee basic benefits on account of the failure of a plan administrator to pay any premium when due.

REPORT BY THE CORPORATION

29 USC 1308.

SEC. 4008. As soon as practicable after the close of each fiscal year the corporation shall transmit to the President and the Congress a report relative to the conduct of its business under this title for that fiscal year. The report shall include financial statements setting forth the finances of the corporation at the end of such fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year and shall include an actuarial evaluation of the expected operations and status of the funds established under section 4005 for the next five years (including a detailed statement of the actuarial assumptions and methods used in making such evaluation).

Ante, p. 1009.

PORTABILITY ASSISTANCE

29 USC 1309.

SEC. 4009. The corporation shall provide advice and assistance to individuals with respect to evaluating the economic desirability of establishing individual retirement accounts or other forms of individual retirement savings for which a deduction is allowable under section 219 of the Internal Revenue Code of 1954 and with respect to evaluating the desirability, in particular cases, of transferring amounts representing an employee's interest in a qualified plan to such an account upon the employee's separation from service with an employer.

Ante, p. 958.

Subtitle B—Coverage

PLANS COVERED

29 USC 1321.

SEC. 4021. (a) Except as provided in subsection (b), this section applies to any plan (including a successor plan) which, for a plan year—

(1) is an employee pension benefit plan (as defined in paragraph (2) of section 3 of this Act) established or maintained—

Ante, p. 833.

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 (as in effect for the preceding 5 plan years of the plan) applicable to plans described in paragraph (2) for the preceding 5 plan years; or 26 USC 401.

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of the Internal Revenue Code of 1954, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of such Code.

For purposes of this title, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) This section does not apply to any plan—

(1) which is an individual account plan, as defined in paragraph (34) of section 3 of this Act, Ante, p. 838.

(2) established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act, 45 USC 215-228 notes, 228a-228s-2.

(3) which is a church plan as defined in section 414(e) of the Internal Revenue Code of 1954, unless that plan has made an election under section 410(d) of such Code, and has notified the corporation in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this part apply to it, Ante, p. 925. Ante, p. 901.

(4)(A) established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to or under the plan is made by employers of participants in the plan, or 26 USC 501.

(B) of which a trust described in section 501(c)(18) of such Code is a part;

(5) which has not at any time after the date of enactment of this Act provided for employer contributions;

(6) which is unfunded and which is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(7) which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens;

(8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Internal Revenue Code of 1954 on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is maintained for such purpose, that part shall be treated for purposes of this title, as a separate plan which is an excess benefit plan; Ante, p. 979.

(9) which is established and maintained exclusively for substantial owners as defined in section 4022(b)(6);

Post, p. 1017.

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act;

22 USC 288 note.

(11) maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35)(B) of section 3 of this Act; or

Ante, p. 838.

(13) established and maintained by a professional service employer which does not at any time after the date of enactment of this Act have more than 25 active participants in the plan.

(c)(1) For purposes of subsection (b)(1), the term "individual account plan" does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b)(13)—

(A) the term "professional service employer" means any proprietorship, partnership, corporation, or other association or organization (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

(B) the term "professional individuals" includes but is not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described in subsection (b)(13) if, at any time after the date of enactment of this Act the plan has more than 25 active participants.

BENEFITS GUARANTEED

29 USC 1322.

SEC. 4022. (a) Subject to the limitations contained in subsection (b), the corporation shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when section 4021 applies to it.

(b)(1) Except to the extent provided in paragraph (8)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 4021(a)) has been in effect includes the time a previously established plan (within the meaning of section 4021(a)) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 4021 does not apply on the day after the date of enactment of this Act, the 60 month period referred to in paragraph (1) shall be computed

beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974. 42 USC 1305.

The provisions of this paragraph do not apply to non-basic benefits.

(4)(A) The actuarial value of a benefit, for purposes of this subsection, shall be determined in accordance with regulations prescribed by the corporation.

(B) For purposes of paragraph (3)—

(i) the term "gross income" means "earned income" within the meaning of section 911(b) of the Internal Revenue Code of 1954 (determined without regard to any community property laws), 26 USC 911.

(ii) in the case of a participant in a plan under which contributions are made by more than one employer, amounts received as gross income from any employer under that plan shall be aggregated with amounts received from any other employer under that plan during the same period, and

(iii) any non-basic benefit shall be disregarded.

(5) Notwithstanding paragraph (3), no person shall receive from the corporation for basic benefits with respect to a participant an amount, or amounts, with an actuarial value which exceeds a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under paragraph (3)(B) at the time of the last plan termination.

(6)(A) For purposes of this title, the term "substantial owner" means an individual who—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1954 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this title an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan. 26 USC 1563.

(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) (as limited under paragraph (3) of this subsection).

(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.

(7)(A) No benefits accrued under a plan after the date on which the Secretary of the Treasury issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401(a) of the Internal Revenue Code of 1954, or that the plan does not meet the requirements of section 404(a)(2) of such Code, are guaranteed under this section unless such determination is erroneous. This subparagraph does not apply if the Secretary subsequently issues a notice that such trust meets the requirements of section 401(a) of such Code or that the plan meets the requirements of section 404 (a)(2) of such Code and if the Secretary determines that the trust or plan has taken action necessary to meet such requirements during the period between the issuance of the notice referred to in the preceding sentence and the issuance of the notice referred to in this sentence.

26 USC 401.
26 USC 404.

(B) No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury to determine that any trust under the plan has ceased to meet the requirements of section 401(a) of the Internal Revenue Code of 1954 or that the plan has ceased to meet the requirements of section 404(a)(2) of such Code, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is revoked as of the date it was first effective or amended to comply with such requirements.

(8) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of—

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) $20 per month,

multiplied by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect. In determining how many years a plan or amendment has been in effect for purposes of this paragraph, the first 12 months following the date on which the plan or amendment is made or first becomes effective (whichever is later) constitutes one year, and each consecutive period of 12 months thereafter constitutes an additional year. This paragraph does not apply to benefits payable under a plan unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this title.

(c) The corporation is authorized to guarantee the payment of such other classes of benefits and to establish the terms and conditions under which such other classes of benefits are guaranteed as it determines to be appropriate.

CONTINGENT LIABILITY COVERAGE

SEC. 4023. (a) The corporation shall insure any employer who maintains or contributes to or under a plan to which section 4021 applies against the payment of any liability imposed on him under subtitle D of this title in the event of a termination of that plan. The corporation may develop arrangements with persons engaged in the business of providing insurance under which the insurance coverage described in the preceding sentence could be provided in whole or in part by such private insurers. In developing such arrangements the corporation shall devise a system under which risks are equitably distributed between the corporation and private insurers with respect to the classes of employers insured by each.

29 USC 1323.
Ante, p. 1014.
Post, p. 1029.

(b) The corporation is authorized to prescribe and collect in such manner as it determines to be appropriate premiums for insurance offered under subsection (a). If the corporation requires all employers to which this title applies to purchase coverage under this section, the provisions of section 4007 (b) and (c) apply to the collection of premiums under this section. The premiums shall be determined by the corporation and revised by it from time to time as may be necessary, and shall be chargeable at a rate sufficient to fund any payment by the corporation becoming necessary under such coverage.

Ante, p. 1013.

(c) If the corporation is, in its determination, able to develop a satisfactory arrangement with private insurers, within 36 months after the date of enactment of this Act, to carry out the program of insurance authorized by this section in whole or in part, the corporation is authorized to require employers to elect coverage by such private insurance or by the corporation at such times and in such manner as the corporation determines necessary.

(d) No payment may be made by the corporation under any insurance provided by it under this section unless the premiums on such insurance have been paid by the employer and the insurance has been in effect (with respect to any benefit) for more than 60 months. The corporation is authorized to prescribe conditions under which no payment will be made by it under any insurance offered under this section without regard to whether premiums for such insurance have been paid.

(e) Nothing in this section precludes the purchase by the employer of insurance from any other person, or limits the circumstances under which that insurance is payable, or in any way limits the terms and conditions of such insurance, except that the corporation may prescribe as a condition precedent to the purchase of such insurance the payment of a reinsurance premium or other reasonable fee under this section determined by the corporation to be necessary to assure the liquidity and adequacy of any fund or funds established to carry out the provisions of this section.

(f) In carrying out its duties under subsection (a) to develop arrangements with private insurers the corporation shall consider as an alternative or as a supplement to private insurance the feasibility of using private industry guarantees, indemnities, or letters of credit.

Subtitle C—Terminations

TERMINATION BY PLAN ADMINISTRATOR

29 USC 1341.

SEC. 4041. (a) Before the effective date of the termination of a plan, the plan administrator shall file a notice with the corporation that the plan is to be terminated on a proposed date (which may not be earlier than 10 days after the filing of the notice), and for a period of 90 days after the proposed termination date the plan administrator shall pay no amount pursuant to the termination procedure of the plan unless, before the expiration of such period, he receives a notice of sufficiency under subsection (b). Upon receiving such a notice, the plan administrator may proceed with the termination of the plan in a manner consistent with this subtitle.

(b) If the corporation determines that, after application of section 4044, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator of such determination as soon as practicable.

(c) If, within such 90-day period, the corporation finds that it is unable to determine that, if the assets of the plan are allocated in accordance with the provisions of section 4044, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator within such 90-day period of that finding. When the corporation issues a notice under this subsection, it shall commence proceedings in accordance with the provisions of section 4042. Upon receiving a notice under this subsection, the plan administrator shall refrain from taking any action under the proposed termination.

Post, p. 1025.

Post, p. 1021.

(d) The corporation and the plan administrator may agree to extend the 90-day period provided by this section by a written agreement signed by the corporation and the plan administrator before the expiration of the 90-day period, or the corporation may apply to an appropriate court (as defined in section 4042(g)) for an order extending the 90-day period provided by this section. The 90-day period shall be extended as provided in the agreement or in any court order obtained by the corporation. The 90-day period may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 90-day period, or by subsequent order of the court. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator or as specified in the court order.

Post, p. 1023.

(e) If, after the plan administrator has begun to terminate the plan as authorized by this section, the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay basic benefits when due, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall institute appropriate proceedings under section 4042. The plan administrator terminating a plan shall furnish such reports to the corporation as it may require for purposes of its duties under this section.

(f) For purposes of subsection (a), a plan with respect to which basic benefits are guaranteed shall be treated as terminated upon the adoption of an amendment to such plan, if, after giving effect to such amendment, the plan is a plan described in section 4021(b)(1).

Ante, p. 1015.

(g) Notwithstanding any other provision of this title, a plan administrator or the corporation may petition the appropriate court for the appointment of a trustee in accordance with the provisions of section 4042 if the interests of the participants and beneficiaries would be better served by the appointment of the trustee.

TERMINATION BY CORPORATION

SEC. 4042. (a) The corporation may institute proceedings under this section to terminate a plan whenever it determines that— 29 USC 1342.

(1) the plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code of 1954, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of such Code has been mailed with respect to the tax imposed under section 4971(a) of such Code, Ante, p. 914. 26 USC 6212. Ante, p. 920.

(2) the plan is unable to pay benefits when due,

(3) the reportable event described in section 4043(b)(7) has occurred, or Post, p. 1024.

(4) the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

The corporation may prescribe a simplified procedure to follow in terminating small plans as long as that procedure includes substantial safeguards for the rights of the participants and beneficiaries under the plans, and for the employers who maintain such plans (including the requirement for a court decree under subsection (c)). The corporation is authorized to pool the assets of such small plans for purposes of administration and such other purposes, not inconsistent with its duties to the plan participants and the employer maintaining the plan under this title, as it determines to be required for the efficient administration of this title.

(b) Whenever the corporation makes a determination under subsection (a) with respect to a plan it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determination is made pending the issuance of a decree under subsection (c) ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan consents to the appointment of a trustee, or fails to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer the plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary. The corporation may request that it be appointed as trustee of a plan in any case.

(c) If the corporation has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subsection (b)) has determined that the plan should be terminated, it may, upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants and to avoid any further deterioration of the financial condition of the plan or any further increase in the liability of the fund. If the trustee appointed under subsection (b) disagrees with the determination of the corporation under the preceding sentence he may intervene in the proceeding relating to the application for the decree, or make application for such decree himself. Upon granting a decree for which the corporation or trustee has applied under this

subsection the court shall authorize the trustee appointed under subsection (b) (or appoint a trustee if one has not been appointed under such subsection and authorize him) to terminate the plan in accordance with the provisions of this subtitle. If the corporation and the plan administrator agree that a plan should be terminated and agree to the appointment of a trustee without proceeding in accordance with the requirements of this subsection (other than this sentence) the trustee shall have the power described in subsection (d)(1) and, in addition to any other duties imposed on the trustee under law or by agreement between the corporation and the plan administrator, the trustee is subject to the duties described in subsection (d)(3). Whenever a trustee appointed under this title is operating a plan with discretion as to the date upon which final distribution of the assets is to be commenced, the trustee shall notify the corporation at least 10 days before the date on which he proposes to commence such distribution.

Duties.

(d)(1)(A) A trustee appointed under subsection (b) shall have the power—

(i) to do any act authorized by the plan or this title to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee;

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan, regulations of the corporation, and applicable rules of law;

(iv) to limit payment of benefits under the plan to basic benefits or to continue payment of some or all of the benefits which were being paid prior to his appointment; and

(v) to do such other acts as he deems necessary to continue operation of the plan without increasing the potential liability of the corporation, if such acts may be done under the provisions of the plan.

Transfer of assets and records.

If the court to which application is made under subsection (c) dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) within 30 days after the date on which the trustee is appointed under subsection (b), the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct, or for conduct in violation of the provisions of part 4 of subtitle B of title I of this Act (except as provided in subsection (d)(1)(A)(v)). The 30-day period referred to in this subparagraph may be extended as provided by agreement between the plan administrator and the corporation or by court order obtained by the corporation.

Ante, p. 874.

(B) If the court to which an application is made under subsection (c) issues the decree requested in such application, in addition to the powers described in subparagraph (A), the trustee shall have the power—

(i) to pay benefits under the plan in accordance with the allocation requirements of section 4044;

Post, p. 1025.

(ii) to collect for the plan any amounts due the plan;

(iii) to receive any payment made by the corporation to the plan under this title;

(iv) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan, except to the extent that the corporation is an adverse party in a suit or proceeding;

(v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court;

(vi) to liquidate the plan assets;

(vii) to recover payments under section 4045(a); and

(viii) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries.

Post, p. 1027.

(2) As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this title to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term "interested party" means—

"Interested party."

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant, and

(C) each employer who may be subject to liability under section 4062, 4063, or 4064.

Post, pp. 1029-1031.

(3) Except to the extent inconsistent with the provisions of this Act, or as may be otherwise ordered by the court, a trustee appointed under this section shall be subject to the same duties as a trustee appointed under section 47 of the Bankruptcy Act, and shall be, with respect to the plan, a fiduciary within the meaning of paragraph (21) of section 3 of this Act and under section 4975(e) of the Internal Revenue Code of 1954 (except to the extent that the provisions of this title are inconsistent with the requirements applicable under part 4 of subtitle B of title I of this Act and of such section 4975).

11 USC 75.

Ante, p. 833.
Ante, p. 971.
Ante, p. 874.

(e) An application by the corporation under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act. Pending an adjudication under subsection (c) such court shall stay, and upon appointment by it of a trustee, as provided in this section such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

Jurisdiction.

11 USC 501.

(g) An action under this subsection may be brought in the judicial district where the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

(h)(1) The amount of compensation paid to each trustee appointed under the provisions of this title shall require the prior approval of the corporation, and, in the case of a trustee appointed by a court, the consent of that court.

Compensation, approval.

(2) Trustees shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel in accordance with regulations prescribed by the corporation.

REPORTABLE EVENTS

29 USC 1343.

SEC. 4043. (a) Within 30 days after the plan administrator knows or has reason to know that a reportable event described in subsection (b) has occurred, he shall notify the corporation that such event has occurred. The corporation is authorized to waive the requirement of the preceding sentence with respect to any or all reportable events with respect to any plan, and to require the notification to be made by including the event in the annual report made by the plan. Whenever an employer making contributions under a plan to which section 4021 applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.

Ante, p. 1014.

(b) For purposes of this section a reportable event occurs—

(1) when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2), or when the Secretary of Labor determines the plan is not in compliance with title I of this Act;

Ante, p. 832.

(2) when an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased;

(3) when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year;

(4) when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of the Internal Revenue Code of 1954, but the occurrence of such a termination or partial termination does not, by itself, constitute or require a termination of a plan under this title;

Ante, p. 912.

(5) when the plan fails to meet the minimum funding standards under section 412 of such Code (without regard to whether the plan is a plan described in section 4021(a)(2) of this Act) or under section 302 of this Act;

Ante, p. 914.
Ante, p. 1014.
Ante, p. 869.

(6) when the plan is unable to pay benefits thereunder when due;

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section 4022(b)(6) if—

Ante, p. 1016.

(A) such distribution has a value of $10,000 or more;

(B) such distribution is not made by reason of the death of the participant; and

(C) immediately after the distribution, the plan has nonforfeitable benefits which are not funded;

(8) when a plan merges, consolidates, or transfers its assets under section 208 of this Act, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 110 of this Act; or

Ante, p. 865.
Ante, p. 851.

(9) when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.

For purposes of paragraph (7), all distributions to a participant within any 24-month period are treated as a single distribution.

(c) The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

(d) The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (5), or (8) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

ALLOCATION OF ASSETS

SEC. 4044. (a) In the case of the termination of a defined benefit plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order: 29 USC 1344.

(1) First, to that portion of each individual's accured benefit which is derived from the participant's contributions to the plan which were not mandatory contributions.

(2) Second, to that portion of each individual's accrued benefit which is derived from the participant's mandatory contributions.

(3) Third, in the case of benefits payable as an annuity—

(A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least,

(B) in the case of a participant's or beneficiary's benefit (other than a benefit described in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(4) Fourth—

(A) to all other benefits (if any) of individuals under the plan guaranteed under this title (determined without regard to section 4022(b)(5)), and Ante, p. 1016.

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 4022(b)(6) did not apply.

For purposes of this paragraph, section 4021 shall be applied without regard to subsection (c) thereof. Ante, p. 1014.

(5) Fifth, to all other nonforfeitable benefits under the plan.

(6) Sixth, to all other benefits under the plan.

(b) For purposes of subsection (a)—

(1) The amount allocated under any paragraph of subsection (a) with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of subsection (a).

(2) If the assets available for allocation under any paragraph of subsection (a) (other than paragraphs (5) and (6)) are insufficient to satisfy in full the benefits of all individuals which are

described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

(A) If this paragraph applies, except as provided in subparagraph (B), the assets shall be allocated to the benefits of individuals described in such paragraph (5) on the basis of the benefits of individuals which would have been described in such paragraph (5) under the plan as in effect at the beginning of the 5-year period ending on the date of plan termination.

(B) If the assets available for allocation under subparagraph (A) are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph (A), benefits of individuals described in such subparagraph shall be determined on the basis of the plan as amended by the most recent plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph (A) and any assets remaining to be allocated under such subparagraph shall be allocated under subparagraph (A) on the basis of the plan as amended by the next succeeding plan amendment effective during such period.

(4) If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1954 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a), 403(a), or 405(a) of such Code, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) shall be reallocated to the extent necessary to avoid such discrimination.

Ante, p. 938.

26 USC 403, 405.

(5) The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

(6) A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) in accordance with regulations prescribed by the corporation.

(c) Any increase or decrease in the value of the assets of a plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 4042(b) or (2) the date on which the plan is terminated is to be allocated between the plan and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator in any other case. Any increase or decrease in the value of the assets of a plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation.

Ante, p. 1021.

(d)(1) Any residual assets of a plan may be distributed to the employer if—

(A) all liabilities of the plan to participants and their beneficiaries have been satisfied,

(B) the distribution does not contravene any provision of law, and

(C) the plan provides for such a distribution in these circumstances.

(2) Notwithstanding the provisions of paragraph (1), if any assets of the plan attributable to employee contributions, remain after all liabilities of the plan to participants and their beneficiaries have been satisfied, such assets shall be equitably distributed to the employees who made such contributions (or their beneficiaries) in accordance with their rate of contributions.

RECAPTURE OF CERTAIN PAYMENTS

SEC. 4045. (a) Except as provided in subsection (c), the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b)) of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated. 29 USC 1345.

(b) For purposes of subsection (a) the recoverable amount is the excess of the amount determined under paragraph (1) over the amount determined under paragraph (2).

(1) The amount determined under this paragraph is the sum of the amount of the actual payments received by the participant within the 3-year period.

(2) The amount determined under this paragraph is the sum of—

(A) the sum of the amount such participant would have received during each consecutive 12-month period within the 3 years if the participant received the benefit in the form described in paragraph (3),

(B) the sum for each of the consecutive 12-month periods of the lesser of—

(i) the excess, if any, of $10,000 over the benefit in the form described in paragraph (3), or

(ii) the excess of the actual payment, if any, over the benefit in the form described in paragraph (3), and

(C) the present value at the time of termination of the participant's future benefits guaranteed under this title as if the benefits commenced in the form described in paragraph (3).

(3) The form of benefit for purposes of this subsection shall be the monthly benefit the participant would have received during the consecutive 12-month period, if he had elected at the time of the first payment made during the 3-year period, to receive his interest in the plan as a monthly benefit in the form of a life annuity commencing at the time of such first payment.

(c)(1) In the event of a distribution described in section 4043(b)(7) the 3-year period referred to in subsection (b) shall not end sooner than the date on which the corporation is notified of the distribution.

(2) The trustee shall not recover any payment made from a plan after or on account of the death of a participant, or to a participant who is disabled (within the meaning of section 72(m)(7) of the Internal Revenue Code of 1954). 26 USC 72.

(3) The corporation is authorized to waive, in whole or in part, the recovery of any amount which the trustee is authorized to recover for the benefit of a plan under this section in any case in which it determines that substantial economic hardship would result to the participant or his beneficiaries from whom such amount is recoverable.

REPORTS TO TRUSTEE

29 USC 1346.

SEC. 4046. The corporation and the plan administrator of any plan to be terminated under this subtitle shall furnish to the trustee such information as the corporation or the plan administrator has and, to the extent practicable, can obtain regarding—

(1) the amount of benefits payable with respect to each participant under a plan to be terminated,

Ante, p. 1016.

(2) the amount of benefits guaranteed under section 4022 which are payable with respect to each participant in the plan,

(3) the present value, as of the time of termination, of the aggregate amount of benefits payable under section 4022 (determined without regard to section 4022(b)(5)),

(4) the fair market value of the assets of the plan at the time of termination,

Ante, p. 1025.

(5) the computations under section 4044, and all actuarial assumptions under which the items described in paragraphs (1) through (4) were computed, and

(6) any other information with respect to the plan the trustee may require in order to terminate the plan.

RESTORATION OF PLANS

29 USC 1347.

SEC. 4047. Whenever the corporation determines that a plan which is to be terminated, or which is in the process of being terminated, under this subtitle should not be terminated as a result of such circumstances as the corporation determines to be relevant, the corporation is authorized to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated. In the case of a plan which has been terminated under section 4042 the corporation is authorized in any such case in which the corporation determines such action to be appropriate and consistent with its duties under this title, to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator of control of part or all of the remaining assets and liabilities of the plan.

Ante, p. 1021

DATE OF TERMINATION

29 USC 1348.

SEC. 4048. For purposes of this title the date of termination is—

(1) in the case of a plan terminated in accordance with the provisions of section 4041, the date established by the plan administrator and agreed to by the corporation,

Ante, p. 1020.

(2) in the case of a plan terminated in accordance with the provisions of section 4042, the date established by the corporation and agreed to by the plan administrator, or

(3) in the case of a plan terminated in accordance with the provisions of either section in any case in which no agreement is reached between the plan administrator and the corporation (or the trustee), the date established by the court.

Subtitle D—Liability

AMOUNTS PAYABLE BY THE CORPORATION

SEC. 4061. The corporation shall pay benefits under a plan terminated under this title subject to the limitations and requirements of subtitle B of this title. Amounts guaranteed by the corporation under section 4022 shall be paid by the corporation out of the appropriate fund. 29 USC 1361. Ante, p. 840. Ante, p. 1016.

LIABILITY OF EMPLOYER

SEC. 4062. (a) This section applies to any employer who maintained a plan (other than a multiemployer plan) at the time it was terminated, but does not apply— 29 USC 1362.

(1) to an employer who maintained a plan with respect to which he paid the annual premium described in section 4006(a)(2)(B) for each of the 5 plan years immediately preceding the plan year during which the plan terminated unless the conditions imposed by the corporation on the payment of coverage under section 4023 do not permit such coverage to apply under the circumstances, or Ante, p. 1010.

(2) to the extent of any liability arising out of the insolvency of an insurance company with respect to an insurance contract.

(b) Any employer to which this section applies shall be liable to the corporation, in an amount equal to the lesser of—

(1) the excess of—

(A) the current value of the plan's benefits guaranteed under this title on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section.

(c) For purposes of subsection (b)(2) the net worth of an employer is—

(1) determined on whatever basis best reflects, in the determination of the corporation, the current status of the employer's operations and prospects at the time chosen for determining the net worth of the employer, and

(2) increased by the amount of any transfers of assets made by the employer determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under the Bankruptcy Act if the employer were the subject of a proceeding under that Act. 11 USC 1 note.

(d) For purposes of this section the following rules apply in the case of certain corporate reorganizations:

(1) If an employer ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the employer to whom this section applies.

(2) If an employer ceases to exist by reason of a liquidation into a parent corporation, the parent corporation shall be treated as the employer to whom this section applies.

(3) If an employer ceases to exist by reason of a merger, consolidation, or division, the successor corporation or corporations shall be treated as the employer to whom this section applies.

(e) If an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment, the employer shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 4063, 4064, and 4065 shall apply.

LIABILITY OF SUBSTANTIAL EMPLOYER FOR WITHDRAWAL

29 USC 1363.

SEC. 4063. (a) Except as provided in subsection (d), the plan administrator of a plan under which more than one employer makes contributions—

(1) shall notify the corporation of the withdrawal of a substantial employer from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of such employer under this subtitle with respect to such withdrawal.

The corporation shall, as soon as practicable thereafter, determine whether such employer is liable for any amount under this subtitle with respect to the withdrawal and notify such employer of such liability.

(b) Except as provided in subsection (c), an employer who withdraws from a plan to which section 4021 applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a), shall be liable to the corporation in accordance with the provisions of section 4062 and this section. The amount of such employer's liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 4062 for the entire plan, as if the plan had been terminated by the corporation on the date of the employer's withdrawal, multiplied by a fraction—

Ante, p. 1014.

Ante, p. 1029.

(1) the numerator of which is the total amount required to be contributed to the plan by such employer for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount required to be contributed to the plan by all employers for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions of paragraphs (2) and (3) of subsection (c).

(c)(1) In lieu of payment of his liability under this section the employer may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 6 through 13 of title 6, United States Code. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated within the 5-year period commencing on the day of withdrawal, the liability of such employer is abated and any payment held in escrow shall be refunded without interest to the employer (or his bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the employer which is not required to meet any obligation of the corporation with respect to the plan.

(d) The provisions of this subsection apply in the case of a withdrawal described in subsection (a), and the provisions of subsections (b) and (c) shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 4064 and is more appropriate in the particular case. Upon a showing by the plan administrator of a plan that the withdrawal from the plan by any employer or employers has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan by employers, the corporation may—

(1) require the plan fund to be equitably allocated between those participants no longer working in covered service under the plan as a result of their employer's withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a termination; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section to any employer or plan administrator whenever it determines that there is an indemnity agreement in effect among all other employers under the plan which is adequate to satisfy the purposes of this section and of section 4064. Waiver.

LIABILITY OF EMPLOYERS ON TERMINATION OF PLAN MAINTAINED BY MORE THAN ONE EMPLOYER

SEC. 4064. (a) This section applies to all employers who maintain a plan under which more than one employer makes contributions at the time such plan is terminated. or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan. 29 USC 1364.

(b) The corporation shall determine the liability of each such employer in a manner consistent with section 4062 except that the amount of the liability determined under section 4062(b)(1) with respect to the entire plan shall be allocated to each employer by multiplying such amounts by a fraction— Ante, p. 1029.

(1) the numerator of which is the amount required to be contributed to the plan by each employer for the last 5 plan years ending prior to the termination, and

(2) the denominator of which is the total amount required to be contributed to the plan by all such employers for such last 5 years,

and the limitation described in section 4062(b)(2) shall be applied separately to each employer. The corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations.

ANNUAL REPORT OF PLAN ADMINISTRATOR

29 USC 1365.

SEC. 4065. For each plan year for which section 4021 applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

Ante, p. 1030.

(1) a copy of each notification required under section 4063 with respect to such year, and

Ante, p. 1024.

(2) a statement disclosing whether any reportable event (described in section 4043(b)) occurred during the plan year.

The report shall be filed within 6 months after the close of the plan year to which it relates. The corporation shall cooperate with the Secretary of the Treasury and the Secretary of Labor in an endeavor to coordinate the timing and content, and possibly obtain the combination, of reports under this section with reports required to be made by plan administrators to such Secretaries.

ANNUAL NOTIFICATION TO SUBSTANTIAL EMPLOYERS

29 USC 1366.

SEC. 4066. The plan administrator of each plan under which contributions are made by more than one employer shall notify, within 6 months after the close of each plan year, any employer making contributions under that plan who is described in section 4001(a)(2) that he is a substantial employer for that year.

Ante, p. 1003.

RECOVERY OF EMPLOYER LIABILITY FOR PLAN TERMINATION

29 USC 1367.

SEC. 4067. The corporation is authorized to make arrangements with employers who are liable under section 4062, 4063, or 4064 for payment of their liability, including arrangements for deferred payment on such terms and for such periods as the corporation deems equitable and appropriate.

LIEN FOR LIABILITY OF EMPLOYER

29 USC 1368.
Ante, pp. 1029-1031.

SEC. 4068. (a) If any employer or employers liable to the corporation under section 4062, 4063, or 4064 neglect or refuse to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation upon all property and rights to property, whether real or personal, belonging to such employer or employers.

(b) The lien imposed by subsection (a) arises on the date of termination of a plan, and continues until the liability imposed under section 4062, 4063, or 4064 is satisfied or becomes unenforceable by reason of lapse of time.

(c)(1) Except as otherwise provided under this section, the priority of the lien imposed under subsection (a) shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. Such section 6323 shall be applied by substituting "lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974" for "lien imposed by section 6321"; "corporation" for "Secretary or his delegate"; "employer liability lien" for "tax lien"; "employer" for "taxpayer"; "lien arising under section 4068(a) of the Employee

26 USC 6323.

Retirement Income Security Act of 1974" for "assessment of the tax"; and "payment of the loan value is made to the corporation" for "satisfaction of a levy pursuant to section 6332(b)"; each place such terms appear. 26 USC 6332.

(2) In the case of bankruptcy or insolvency proceedings, the lien imposed under subsection (a) shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191). 11 USC 1 note.

(3) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under subsection (a) and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed. 26 USC 6323.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) shall be filed in the same manner as under section 6323 (f) and (g) of the Internal Revenue Code of 1954.

(d)(1) In any case where there has been a refusal or neglect to pay the liability imposed under section 4062, 4063, or 4064, the corporation may bring civil action in a district court of the United States to enforce the lien of the corporation under this section with respect to such liability or to subject any property, of whatever nature, of the employer, or in which he has any right, title, or interest to the payment of such liability. Ante, p. 1029-1031.

(2) The liability imposed by section 4062, 4063, or 4064 may be collected by a proceeding in court if the proceeding is commenced within 6 years after the date upon which the plan was terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the employer before the expiration of such 6-year period. The period of limitations provided under this paragraph shall be suspended for the period the assets of the employer are in the control or custody of any court of the United States, or of any State, or of the District of Columbia, and for 6 months thereafter, and for any period during which the employer is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) If the corporation determines, with the consent of the board of directors, that release of the lien or subordination of the lien to any other creditor of the employer or employers would not adversely affect the collection of the liability imposed under section 4062, 4063, or 4064, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such release or subordination, and that the ultimate collection of the liability will be facilitated by such release or subordination, the corporation may issue a certificate of release or subordination of the lien with respect to such property, or any part thereof.

Subtitle E—Amendments to Internal Revenue Code of 1954; Effective Dates

AMENDMENTS TO INTERNAL REVENUE CODE OF 1954

SEC. 4081. (a) Section 404 of the Internal Revenue Code of 1954 (relating to deduction for contributions of an employer to employees' trust or annuity plan in compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection: 26 USC 404.

88 STAT. 1034

"(g) CERTAIN EMPLOYER LIABILITY PAYMENTS CONSIDERED AS CONTRIBUTIONS.—For purposes of this section any amount paid by an employer under section 4062, 4063, or 4064 of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.".

Ante, pp. 1029-1031.

26 USC 6511.

(b) Section 6511(d) of the Internal Revenue Code of 1954 (relating to special rules applicable to income taxes) is amended by adding at the end thereof the following new paragraph:

"(8) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO AMOUNTS INCLUDED IN INCOME SUBSEQUENTLY RECAPTURED UNDER QUALIFIED PLAN TERMINATION.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.".

Ante, p. 1027.

EFFECTIVE DATE; SPECIAL RULES

29 USC 1381.

SEC. 4082. (a) The provisions of this title take effect on the date of enactment of this Act.

(b) Notwithstanding the provisions of subsection (a), the corporation shall pay benefits guaranteed under this title with respect to any plan—

(1) which is not a multiemployer plan,

(2) which terminates after June 30, 1974, and before the date of enactment of this Act,

(3) to which section 4021 would apply if that section were effective beginning on July 1, 1974, and

(4) with respect to which a notice is filed with the Secretary of Labor and received by him not later than 10 days after the date of enactment of this Act, except that, for reasonable cause shown, such notice may be filed with the Secretary of Labor and received by him not later than October 31, 1974, stating that the plan is a plan described in paragraphs (1), (2), and (3).

Ante, p. 1014.

The corporation shall not pay benefits guaranteed under this title with respect to a plan described in the preceding sentence unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this title or for the purpose of avoiding the liability which might be imposed under subtitle D if the plan terminated on or after the date of enactment of this Act. The provisions of subtitle D do not apply in the case of such a plan which terminates before the date of enactment of this Act. For purposes of determining whether a plan is a plan described in paragraph (2), the provisions of section 4048 shall not apply, but the corporation shall make the determination on the basis of the date on which benefits ceased to accrue or on any other reasonable basis consistent with the purposes of this subsection.

Ante, p. 1028.

(c)(1) Except as provided in paragraphs (2), (3), and (4), the corporation shall not pay benefits guaranteed under this title with respect to a multiemployer plan which terminates before January 1,

1978. Whenever the corporation exercises the authority granted under paragraph (2) or (3), the corporation shall notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Labor and Public Welfare and the Committee on Finance of the Senate.

(2) The corporation may, in its discretion, pay benefits guaranteed under this title with respect to a multiemployer plan which terminates after the date of enactment of this Act and before January 1, 1978, if—

(A) the plan was maintained during the 60 months immediately preceding the date on which the plan terminates, and

(B) the corporation determines that the payment by the corporation of benefits guaranteed under this title with respect to that plan will not jeopardize the payments the corporation anticipates it may be required to make in connection with benefits guaranteed under this title with respect to multiemployer plans which terminate after December 31, 1977.

(3) Notwithstanding any provision of section 4021 or 4022 which would prevent such payments, the corporation, in carrying out its authority under paragraph (2), may pay benefits guaranteed under this title with respect to a multiemployer plan described in paragraph (2) in any case in which those benefits would otherwise not be payable if—

(A) the plan has been in effect for at least 5 years,

(B) the plan has been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding 5 years, and

(C) the participating employers and employee organization or organizations had no reasonable recourse other than termination.

(4) If the corporation determines, under paragraph (2) or (3), that it will pay benefits guaranteed under this title with respect to a multiemployer plan which terminates before January 1, 1978, the corporation—

(A) may establish requirements for the continuation of payments which commenced before January 2, 1974, with respect to retired participants under the plan,

(B) may not, notwithstanding any other provision of this title, make payments with respect to any participant under such a plan who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to such participant on that date,

(C) may not make any payments with respect to benefits guaranteed under this title in connection with such a plan which are derived, directly or indirectly, from amounts borrowed under section 4005(c), and

Ante, p. 1009.

(D) shall review from time to time payments made under the authority granted to it by paragraphs (2) and (3), and reduce or terminate such payments to the extent necessary to avoid jeopardizing the ability of the corporation to make payments of benefits guaranteed under this title in connection with multiemployer plans which terminate after December 31, 1977, without increasing premium rates for such plans.

Approved September 2, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-533 (Comm. on Education and Labor); No. 93-779 accompanying H.R. 12481; No. 93-807 accompanying H.R. 12855; No. 93-298 accompanying H.R. 4200 (all from Comm. on Ways and Means) and No. 93-1280 (Comm. of Conference).

SENATE REPORTS: No. 93-394 accompanying H.R. 4200 (Comm. on Finance) and No. 93-1090 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 119 (1973): June 27, H.R. 4200 considered and passed House.
Sept. 19, H.R. 4200 considered and passed Senate, amended.

Vol. 120 (1974): Feb. 26-28, considered and passed House.
Mar. 4, considered and passed Senate, amended.
Aug. 20, House agreed to conference report.
Aug. 22, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 10, No. 36 (1974) Sept. 2, Presidential statement.

APPENDIX

ADMINISTRATION RECOMMENDATIONS

TO THE

HOUSE AND SENATE CONFEREES ON

H. R. 2

TO PROVIDE FOR PENSION REFORM

APRIL 1974

(50 47)

DEPARTMENT OF THE TREASURY
Washington, D. C. 20220

U.S. DEPARTMENT OF LABOR
Washington, D. C. 20210

Dear Chairmen:

Enclosed are the Administration's recommendations on H.R. 2, the pension reform legislation now before your Conference.

In our view, the recommendations balance the interests of all participants in the private pension system within the framework of an administratively workable bill. In this respect, we are particularly concerned that the joint jurisdiction over participation, vesting, and funding standards, as given to the Treasury and Labor Departments under the House bill, would result in a complex and costly administrative burden for both the Federal Government and private pension plans. Therefore, we strongly recommend adoption of the provisions in the Senate bill providing lead responsibility in the Treasury Department for enforcement of participation, vesting, and funding standards. However, Treasury regulations which affect collectively bargained plans in these areas should be developed in consultation with the Department of Labor.

We further strongly recommend that the Department of Labor be given lead responsibility for the enforcement of fiduciary standards under an arrangement which would give Labor, in addition to other remedies, full control over the imposition of an excise tax by the Internal Revenue Service. Details of this proposed arrangement are contained in the enclosed recommendation.

We believe that the significance of pension reform for the American people makes it especially important that the views and concerns of the agencies which must administer the legislation be given careful consideration. Therefore, representatives of the affected agencies will be available, as you wish, to participate in discussions and subsequent legislative drafting sessions.

We have provided two copies of the Administration's recommendation for each conferee. Additional copies are available on request.

Sincerely,

George P. Shultz
Secretary of the Treasury

Peter J. Brennan
Secretary of Labor

Enclosure

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ADMINISTRATION RECOMMENDATIONS TO THE HOUSE AND SENATE CONFEREES ON H.R. 2 TO PROVIDE FOR PENSION REFORM

APRIL 1974

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I. ADMINISTERING AGENCY

Administration of Participation, Vesting, and Funding Provisions

House Bill

Under the House bill the Department of the Treasury and the Department of Labor would jointly administer comparable provisions relating to participation, vesting, and funding (Title I, Parts 2 and 3, and Title II, Part 1). The bill also provides that regulations issued by the Department of Labor and the Department of the Treasury with respect to participation, vesting, and funding are effective for plan years beginning after December 31, 1975, only if approved by the Secretary of the other Department (i.e., the Secretary of the Treasury or the Secretary of Labor, respectively).

Senate Bill

Under the Senate bill the Department of the Treasury would administer the tax provisions (Title VII) and would have the principal role in administering participation, vesting, and funding (Title II).

Administration Recommendation

The Administration strongly supports the provisions of the Senate bill. However, Treasury regulations which impact collectively bargained plans as to participation, vesting, and funding should be developed in consultation with the Department of Labor.

Explanation - The House bill provisions requiring dual jurisdiction in areas previously administered solely by Treasury will not only cause delays, conflicts, and friction between the Departments, but will also place an onerous and costly burden on plans and employers. The Internal Revenue Service is best suited to administer the new standards because it is currently staffed and has traditionally regulated these areas.

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Enforcement of Fiduciary Standards

House Bill

The House bill (Sec. 503) provides that the Secretary of Labor shall enforce all fiduciary standards set forth in the bill, except for prohibited transactions presently in the Internal Revenue Code.

Senate Bill

Under the Senate bill (Secs. 522 and 692), responsibility for the enforcement of fiduciary standards is divided between the Department of Labor and the Department of the Treasury. The Secretary of Labor has the authority to bring civil actions against a fiduciary to enjoin future improper conduct or cause his removal. The Internal Revenue Service has the authority to impose a two-tier excise tax on parties in interest who participate in a prohibited transaction (fiduciaries would as a practical matter almost always be a party in interest and hence, would also be subject to the tax).

Administration Recommendation

The Administration recommends a compromise whereby the Department of Labor shall have full responsibility for enforcement of fiduciary standards and the provisions relating to prohibited transactions, while the excise tax provisions in the Senate bill will be retained for use only in cases in which the Department of Labor, after notification by the Internal Revenue Service, has indicated to the IRS that the tax should be imposed or where the Labor Department does not respond to the IRS notice within 90 days. Under the compromise, the

scope of Labor Department coverage shall be extended to include parties in interest as well as fiduciaries. To reach this compromise, the Administration has prepared the attached general specification.

Explanation - The recommended compromise is intended to permit the Department of Labor to retain full responsibility for fiduciary standards and prohibited transactions, while retaining the excise tax by the Internal Revenue Service for only those situations in which it is the most appropriate and efficient remedy. Unlike the dual jurisdiction of the Senate bill, under which the excise tax is automatic and where fiduciaries may receive different treatment than parties in interest to the same prohibited transaction, the proposed compromise allows for a flexible and equitable application of penalties to all parties to the transaction.

The Administration recognizes the general wisdom in giving a single department lead responsibility in administering major sections of the Act. Indeed, the Administration has strongly recommended elsewhere that the Department of Treasury have lead responsibility for the administration of participation, vesting and funding standards. Nevertheless, with respect to fiduciary standards, the Administration believes that an excise tax imposed by the Internal Revenue Service should be retained.

Problems may arise when a party in interest enters into a transaction with a trust which neither jeopardizes the plan or

the interest of plan participants, but which may represent an attempt to secure tax benefits for the employer. For example, the sale by an employer of income producing property to a trust is a device frequently used in smaller plans to shelter property income and capital gains from taxation. Under the Senate bill, such transactions will be prohibited. In such situations, the Internal Revenue Service will be in the best position to assert the tax because it really is a raid on the Treasury and not on the plan. Further, the Internal Revenue Service audits these transactions at the same time that it will be auditing plans for meeting the minimum standards for participation, vesting and funding. While arguably the Internal Revenue Service may audit these kinds of situations even if there were no tax, and could turn over the relevent information to the Department of Labor, it clearly will be preferable to have a tax which will motivate agents and give the district offices an incentive to encourage agent awareness.

Finally, the Administration believes that the excise tax will be an efficient and effective way to deal with many prohibited transactions, especially in small plans, because of the incentive it provides to reverse the transaction in question. In this regard, it is important to note that the five percent tax triggers the time limit within which the transaction must be undone. If the transaction is not undone, the party in

interest will be subject to a tax equal to 100 percent of the amount involved. Further, payment of the tax would in no event remove the obligation to make the trust whole.

Recommended Specifications for the Enforcement of Fiduciary Standards

1. Scope of Coverage

Scope of Department of Labor coverage should be extended to include parties in interest. The Secretary of Labor should have authority to bring an action against parties in interest who participate in a prohibited transaction as well as against fiduciaries alleged to have breached their responsibilities under the Act. In many instances fiduciaries may also be parties in interest, resulting in the possibility of exposure of two enforcement agencies and two penalties. To avoid duplication of effort and the possibility of multiple penalties, the Secretary of Labor should have authority over all parties who participate in a prohibited transaction.

2. Civil Penalties

A Civil penalty (in the discretion of the Court) should be added to the remedies available to the Department of Labor. To assure flexible and just treatment of any allegations of a breach of the fiduciary standards, the Department of Labor must have the authority to request a civil penalty (to be assessed in the discretion of the court) in addition to the other civil remedies available under the current Senate bill. With a full range of civil penalties available to the Secretary, the penalty most appropriate to each set of circumstances may be sought against each party involved in the alleged illegal transaction.

3. Exemptions

Exemptions from prohibited transactions should be limited to those applicable to a class. Exemptions from penalty for engaging in prohibited transactions which may be granted to applicants under the bill should be limited to exemptions applicable to a particular class rather than any one individual or plan. Ease and fairness of administration require that an exemption granted to one member of a class should also be granted to other members of the same class. Granting exemptions on an individual basis would be a burdensome, time-consuming and expensive practice which could be avoided by the development of uniform procedures and regulations permitting exemptions to be granted simultaneously to all members of a particular class.

4. Assertion of Excise Tax

The excise tax (i.e., 5% and 100%) is not to be asserted by the Internal Revenue Service if, within 90 days after receipt by the Department of Labor of (1) notification by the Internal Revenue Service that a tax may be imposed with respect to a prohibited transaction discovered by the Internal Revenue Service and (2) the appropriate investigation files, the Department of Labor indicates that it disapproves or desires that assertion of the tax be deferred. Where Department of Labor brings a fiduciary violation to the attention of the Internal Revenue Service and directs assertion of the excise tax, the Internal Revenue Service will assert the tax claim as expeditiously as possible.

5. Additional Remedies

If the excise tax is assessed by Treasury, Labor will not be precluded from seeking additional remedies for the same transaction. Although the Department of Labor may have previously declined any interest in a case over which the Treasury then asserted and levied the excise tax, further development of fact-findings may indicate that other remedial steps should be taken. At this later time, the Secretary of Labor would be free to impose any of the wide range of civil remedies available to him under the law.

6. Compromise of Tax

The excise tax claim may be comprised or the tax rebated (in whole or in part) only at the initiation of the Department of Labor. If later developments or fact-findings in a case indicate that the Secretary of Labor should consider further remedial procedures, even though no intent was expressed in asserting jurisdiction at an earlier time, he may initiate a whole or partial rebate of the excise tax already assessed. A rebate may be indicated if the Secretary of Labor determines that one or several of the civil penalties available to him would be the most appropriate remedy for a particular transaction.

7. Correction Period

The correction period may be extended only by the Department of Labor. If the Secretary of Labor wishes to become actively involved in a case after his initial failure

to do so and the subsequent imposition of a 5% excise tax on a prohibited transaction which must be corrected within a specified correction period, he must have control over the entire remedial process as it relates to the transaction as a whole. The selection of an appropriate remedy may require that the correction period be extended or waived entirely in some instances.

8. Waivers

The Department of Labor should have sole authority to waive the undoing of a transaction. The requirement that a prohibited transaction must be undone acts as an indirect enforcement tool available to the agency which determines that correction requires undoing of the transaction. If Labor decides after a tax has been assessed, that additional or different enforcement remedies should be applied, the Labor Department must determine at that time whether or not appropriate enforcement requires that the prohibited transaction be undone.

9. Regulation on Fiduciary Standards

Regulations and interpretations respecting substantive fiduciary standards would be promulgated by the Department of Labor, after consultation with the Treasury Department in appropriate cases. Any Treasury regulations or interpretation relating to fiduciary standards, interpretation of "correction" in the context of a fiduciary violation, or remedial procedures would be issued only after consultation with the Labor Department.

In a system of dual agency enforcement, the promulgation by an agency of regulations and interpretations which could affect the assertion of enforcement authority by the other agency must be closely coordinated. Definitions, time limitations or other requirements detailed in regulations published by the Treasury could limit or affect an enforcement scheme imposed by the Department of Labor. Therefore, any regulations or interpretations which could affect any of the variety of penalties and remedies available to both Labor and Treasury should be issued only after joint consultation.

Administration of Termination Insurance

House Bill

Under the House bill (Sec. 401) the insurance Corporation would be administered by a board of directors consisting of the Secretary of Labor and two officers or employees of the Department of Labor chosen by the Secretary.

Senate Bill

Under the Senate Bill (Sec. 402) the Corporation shall be administered by a board of directors consisting of the Secretaries of Labor, Commerce, and Treasury, with the Secretary of Labor as Chairman.

Administration Recommendation

The Administration supports the Senate provisions providing that the three Secretaries make up the board of directors. However, the Administration believes that the board should principally provide policy direction and that operating responsibility should clearly reside in the Labor Department. In this respect, the Senate bill is somewhat ambiguous and accordingly, the Administration has attached clarifying language modifying the Senate text.

Explanation - The deep involvement of the insurance Corporation in matters of private corporation finance, money management, and other matters affecting private business make

it essential that a business perspective be represented on the board of directors. Moreover, the Corporation will need to coordinate closely with the Treasury Department in matters pertaining to funding, valuation and tax policy.

PENSION BENEFIT GUARANTY CORPORATION

Sec. 402

(a) ESTABLISHMENT - There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation (hereinafter referred to as the "Corporation").

(b) GENERAL POWERS - (No change from Senate text)

(c) BOARD OF DIRECTORS

(1) The Board of Directors of the Corporation shall be composed of the Secretary of Treasury, the Secretary of Labor and the Secretary of Commerce.

(2) Members of the Board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Board.

(3) The Secretary of Labor shall be the Chairman of the Board of Directors.

(4) In carrying out any of his functions under the provisions of subsection (d), the Chairman shall be governed by general policies of the Board of Directors and by such regulatory decisions, findings, and determinations as the Board of Directors may by law be authorized to make.

(d) FUNCTIONS OF THE CHAIRMAN - The Chairman of the Board of Directors shall:

(1) Appoint and remove personnel employed under the Corporation.

(2) Assign responsibilities among such personnel and among administrative units of the Corporation.

(3) Direct personnel who perform, or who supervise the performance of, any function of the Chairman, the Corporation, or of any agency under the Corporation.

(4) Communicate to personnel employed under the Corporation applicable policies to be followed by such personnel in the performance of their work, and the subsequent enforcement of such policies.

(5) Oversee management, functioning and organization of the Corporation, including (A) the formation and implementation of plans and policies designed to increase the effectiveness of the Corporation in the administration of this Title and the initiation of ways and means of correcting or preventing avoidable delays in the performance of any work or the disposition of any business before the Corporation and (B) the development and improvement of staff support to carry out the functions of the Corporation.

(6) Allocate, use, and expend funds available to the Corporation for administrative expense purposes.

(7) Call the Board of Directors into special session whenever any matter or business of the Corporation so requires, but in any event, for the consideration of any matter of business upon request of one or both of the other members of the Board of Directors.

Staff for the Administration of Pension Legislation

House Bill

The House bill (Sec. 1051) establishes a separate office in the Internal Revenue Service to carry out the Service's functions with regard to employee plans and exempt organizations. This office is to be directed by an Assistant Commissioner of Internal Revenue.

Senate Bill

The Senate bill (Sec. 101) creates the same separate office in the Internal Revenue Service. It provides that the Assistant Commissioner in charge of the office is to be classified as a GS-18 and also provides for an additional 20 positions each in both the Internal Revenue Service and Labor Department at the levels of GS-16 and GS-17.

Administration Recommendation

The Administration recommends against the statutory supergrades provisions of the Senate bill, but suggests that the conference report include a recommendation that an appropriate number of additional supergrade positions be provided for allocation to the Internal Revenue Service and the Department of Labor, depending upon the final provisions adopted.

Explanation - The Administration recommendation reflects the fact that the jurisdiction for Federal employee pay matters is not with the Tax or Labor Committee in the Congress, but with the Committees on Post Office and Civil Service.

II. PARTICIPATION/VESTING/FUNDING

Minimum Age and Service Requirements for Participation

House Bill

The House bill (Sec. 202) provides that a plan may not exclude (on account of his failure to satisfy the plan's age and service requirements) an employee who has completed three years of service or has attained age 25 and has completed one year of service. However, a plan could require three years of service in the case of a participant with a nonforfeitable right to 100 percent of his accrued benefit at the time the benefit accrues.

Senate Bill

The Senate bill (Sec. 201) provides that a plan may not exclude (on account of his failure to satisfy the plan's age and service requirements) an employee who completes one year of service and attains age 30. The Senate bill does not provide a rule under which three years of service may be required where a participant has a nonforfeitable right to 100 percent of his accrued benefit at the time the benefit accrues, except in the case of plans covering owner-employees.

Administration Recommendation

The Administration recommends the following minimum age and service requirement for participation:

A plan may not exclude (on account of his failure to satisfy the plan's age and service requirements) an

employee who has completed five (5) years of service or who has attained age thirty (30) and has completed one (1) year of service. A plan could, however, require three (3) years of service if it provides 100 percent vesting upon participation.

Explanation - The Administration's recommendation is a compromise between the House and Senate proposals. Requiring participation after five (5) years is consistent with existing IRS coverage requirements and will insure that no existing plan can relax its current participation rules. Furthermore, the five year rule will insure that younger employees will participate after a reasonable period of service without unduly burdening employers with the costs associated with participation by high-turnover young employees.

The three year, 100 percent vesting rule would treat corporate plans in a fashion consistent with the rules now governing owner-employee (H.R. 10) plans. Inasmuch as the somewhat longer participation requirement is more than compensated for by rapid vesting, the Administration sees no reason for prohibiting corporate plans from electing this option.

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Maximum Age Conditions

House Bill

The House bill (Sec. 202) permits a defined benefit plan to exclude employees who are hired within five years of normal retirement age.

Senate Bill

The Senate bill (Sec. 201) does not provide any authority to exclude employees hired within any specified number of years of normal retirement age.

Administration Recommendation

The Administration supports the provisions of the House bill but would extend coverage to target benefit plans.

Explanation - In both defined benefit and target benefit plans, the mandating of participation of older workers could significantly reduce job opportunities for such workers because of the large employer contributions necessary to fund benefits at ages near retirement.

Mandated Vesting Schedules

House Bill

The House bill (Sec. 203) provides three vesting schedules: 10-year, 100 percent vesting; graded vesting from 5 to 15 years; and an age weighted vesting rule of 45. There is a transitional percentage for plans in existence on December 31, 1973. The transition is a phase-in of 50 percent of the vesting otherwise required, for the first plan year to which the rules apply and an additional 10 percent per year of the vesting percentage for each year thereafter.

Senate Bill

The Senate bill (Sec. 221) provides a single graded vesting schedule of 5 to 15 years for new plans, and a 10-year, 100 percent vesting rule for plans with such provisions of the date of enactment. No transition period or phase-in of the mandated vesting schedule is provided, although the Secretary of Labor may delay the effective date for up to six years for plans which would sustain substantial economic hardship under the mandated schedule.

Administration Recommendation

The Administration recommends a choice between 5 to 15 year graded vesting and the rule of 45 for all plans, but would allow grandfathering for plans providing a 10-year, 100 percent vesting rule on the date of enactment. The Administration favors the transitional rule of the House bill.

Explanation - Unlimited applicability of ten-year "cliff vesting", especially to small non-union plans, is not generally permitted under present law, due to IRS interpretation of discrimination requirements. Such vesting maximizes the incentive for employers to terminate employees approaching 10 years of credited service and can result in significant and often unreasonable benefit losses for employees having breaks in service prior to vesting. There is no reason for the bill to weaken substantially existing vesting requirements. Hence, at least for new small non-union plans, no ten-year "cliff vesting" should be permitted. Thus, the Senate grandfathering approach provides better retirement security. Under the House version, the IRS would continue in practice to prevent ten-year cliff vesting for small plans, and there would simply be a perpetuation of the present uneven and inconsistent rules on vesting which vary from case to case and district to district.

Service Credited for Vesting Purposes

House Bill

In computing the nonforfeitable percentage under the House bill (Sec. 203 and Sec. 1012) certain service is not taken into account. The service not taken into account consists of service before age 25, service during a period for which the employee declines to contribute to a plan requiring employee contributions, service with an employer during a period for which the employer did not maintain the plan, service not taken into account for purposes of determining a year of service under the participation rules, service broken by periods of suspension of employment (if the rules governing such suspension of employment are permitted under the rules for determining a year of service), and service before January 1, 1969 (unless the employee has had at least five years of service after December 31, 1968).

Senate Bill

In determining the nonforfeitable percentage under the Senate bill (Sec. 221) no year of service is taken into account which begins more than five years before the beginning of the year in which an employee is first eligible to participate in the plan unless the employee or employer makes contributions under the plan for that period. No period of service is taken into account which occurs prior to the effective date of the plan. Service prior to the date of enactment is to be taken into account.

Administration Recommendation

The Administration recommends a dual standard for credited service tied to the particular vesting standard adopted by a plan. Specifically, the Administration recommends that:

(a) For plans satisfying 10-year or rule of 45 vesting, the general provisions of the Senate bill should apply, which allow plans to ignore service which begins more than five years before the year in which an employee first satisfies the minimum age and service requirements for participation under the plan.

(b) For plans satisfying 5 to 15 year graded vesting, the general provisions of the House bill should apply, which allow plans to ignore service before age 25. However, the provision involving service before January 1, 1969 should be dropped, leaving the credit for service prior to the date of enactment subject to the break in service rules adopted.

Explanation - The issues relating to the choice of a credited service rule for purposes of vesting must be considered in the context of the participation rule and vesting schedule operating under a pension plan.

Under plans utilizing 10 years or rule of 45 vesting, employees entering service at an early age could suffer significant benefit losses, where the House credited service rule applies, even after relatively long service. Specifically,

an employee entering service at age 17 with an employer offering a plan with 10 year or rule of 45 vesting, the House credited service rule, and the Administration recommended participation rule (age 30 and one year of service, or after 5 years of service), would not acquire any vesting until age 35--18 years later. Such an employee, leaving service at age 34 after 17 years of service, would leave with no vested benefits. Were the Senate credited service rule to apply, as the Administration recommends, this same employee would acquire vesting at age 27 under 10 year vesting, and at age 31 under the rule of 45.

On the other hand, in the case of 5 to 15 year graded vesting, the Senate credited service rule for the same employee cited above would result in partial vesting immediately upon participation at age 22. If the employee were to then terminate a year or two later, the amount of vester accrued benefits would be extremely small, and any lump-sum settlement to the employee would be of such a trifling amount that it would likely be spent rather than saved. In effect, the employer's contribution would serve as severance pay rather than as a contribution towards retirement security. Under the House credited service rule, partial vesting for this same employee would not begin until age 30, which is comparable to the situation the employee would face under the Senate rule in a plan utilizing 10 year or rule of 45 vesting.

Breaks in Service

House Bill

Under the House bill (Sec. 206), if an employee has a one-year break in service, the plan may require a one-year waiting period before his pre-break and post-break service are aggregated. Subject to this one-year waiting period, all pre-break service of an employee who is at least 50 percent vested must be taken into account in determining the employee's right to participation and vesting. Generally (also subject to the one-year waiting period), all service of an employee who has at least four consecutive years of service must be taken into account, but this rule may be disregarded where such an employee (who is not at least 50 percent vested) has a break in service of at least six years.

Senate Bill

Generally, under the Senate bill (Sec. 221) all pre-break and post-break service must be aggregated for participation and vesting purposes. A plan could, however, require three consecutive years of service before attaining the first step on the vesting schedule (i.e., the 25 percent step). Also, it is intended that, after a 10-year break in service, the record keeping burden shifts to the employee.

Administration Recommendation

The Administration supports a provision which would allow a plan to require participants to wait for one year before pre- and post-break service are aggregated and which would require

that pre- and post-break service be aggregated (subject to the one-year waiting period) for an employee who has a break of six years or less.

Explanation - The Administration supports the one-year waiting period in the House bill because it will reduce the administrative burden which employers would incur with employees who leave shortly after being rehired. However, in other respects, the Administration believes that the House bill is too complex and will impose an onerous administrative burden on employers since it requires them to maintain records on employees with 50 percent vesting forever. On the other hand, the provision in the Senate bill, requiring aggregation of all service, may create re-employment obstacles for employees--especially after long breaks--where the advantages of rehiring a proven employee may be outweighed by the added pension costs resulting from vesting credit for prior service. Moreover, the Administration does not see any compelling reasons why, after a long break in service, a former employee should be treated differently from new employees.

The Administration's proposal, requiring the aggregation of breaks in service of six or less years, is a reasonable compromise which would adequately protect participants with relatively short breaks and which would not create serious administrative problems since present law requires the retention of records for six years.

Reemployment--Benefits Accrued During Previous Employment

House Bill

Under the House bill (Secs. 205, 206, and 1012), if a participant severs employment prior to receiving full vesting and is reemployed within six years (unless he is 50 percent vested) such participant continues to vest after reemployment in benefits that accrue with respect to his former, as well as current, employment. The bill provides an exception in that a lump sum settlement with respect to benefits accrued in any prior year will prevent additional vesting on reemployment with respect to these benefits. The choice of such lump sums is optional to the employee unless the amount is less than $1,750.

Senate Bill

Under the Senate bill (Sec. 221) a participant described above on reemployment will only obtain additional vesting with respect to benefits accruing during his current employment.

Administration Recommendation

The Administration favors the provisions of the Senate bill.

Explanation - The Administration is reluctant in its support of the Senate provision because it may result in significant benefit losses for employees taking relatively short breaks

and where there is no interim employment with another employer. These losses can be especially significant where ten year vesting is involved, which is just another reason why the Administration is opposed to such vesting provisions. However, requiring employers to grant additional vesting to pre-break benefits, even for breaks less than some limited period, e.g., six years, would result in administrative problems and costs of such a magnitude, especially for profit-sharing and money purchase plans, that many employers might simply refuse to rehire prior employees. The net effect, therefore, would be to cause more harm than good.

Accrued Benefit

House Bill

In the case of a defined contribution plan, accrued benefits are defined as the account balance. In the case of a defined benefit plan, two alternative parameters are provided for testing a plan's computation of accrued benefit--the three percent method and the 133 1/3 percent rule.

Under the three percent method, for each year of participation, each participant must accrue at least three percent of the benefit to which he would be entitled if he participated in the plan for 33 1/3 years and served until age 65. Special rules are provided for determining the benefit at age 65 or normal retirement age.

Under the 133 1/3 percent rule, the benefit accrual rate in any year may not exceed 133 1/3 percent of the rate of accrual for the current year. The rule is designed to limit front-loading and back-loading of accruals. Unlimited front-loading is permitted during the first 10 years of plan participation.

Under the House bill subsidized early retirement benefits are ignored for purposes of determining when benefits are payable.

Senate Bill

Under the Senate bill (Sec. 221) the accrued benefit is defined as the account balance in the case of a defined contribution plan. The accrued benefit in the case of a defined benefit plan is determined on the basis of a straight-line accrual rate for all years of participation.

Under the Senate bill subsidized early retirement is taken into account in determining when benefits are payable.

Administration Recommendation

The Administration supports the 133 1/3 percent rule provided under the House bill which would permit limited back-loading but would delete the three percent method and the limitations on front-loading. The method should be modified, however, to provide that (except in the case of social security supplements) the total monthly dollar benefit accrued by a participant cannot decrease as a function of his increasing age or service.

Explanation - The Administration favors allowing a limited amount of back-loading since it will minimize the disruption for many existing plans, such as the Civil Service Plan and will permit the employer to provide an incentive for employees to stay with the company and to reward those employees who in fact stay.

The three percent rule under the House bill has very limited application since it requires an accrual for exactly 33 1/3 years. In any case, where the three percent rule applies, however, there would be an extreme amount of back-loading for employees hired at a late age. For instance, if the plan accrued three percent per year for 33 1/3 years, an employee who enters at age 55 would accrue 27 percent in nine years and 73 percent in the final year. Thus, the 133 1/3 percent test is a much more reasonable limit on back-loading.

Front-loading occurs when the employee accrues a benefit faster during his earlier years. Thus, the limitation on front-loading in the House bill runs counter to the intent of the bill to encourage the earliest possible pension security; hence, the Administration opposes any such limits.

The Administration opposes the Senate provision requiring that subsidized early retirement be taken into account in determining accruals, because it will be extremely costly to many employers and may, in fact, result in a compensating reduction in benefits. However, ignoring subsidized retirement benefits creates a loophole whereby a plan could have normal retirement benefits which are much lower than its early retirement benefits. This would keep accrual rates low for purposes of determining the benefits of employees who terminate prior to the earliest retirement age. Thus, in order to prevent this loophole, the Administration has recommended that the total monthly dollar benefit accrued by a participant not decrease as a function of increasing age or service.

Requirement of Nonforfeitability in Case of Certain Withdrawals

House Bill

Under the House bill (Sec. 1021) a plan does not qualify if vested benefits are forfeitable solely because of the withdrawal by a participant of any part of the benefits derived from his contributions.

Senate Bill

Under the Senate bill (Sec. 221) a plan would not be disqualified merely because it provides that an employee's right to benefits derived from employer contributions is forfeitable if he withdraws all or any part of the benefit attributable to his own contributions.

Administration Recommendation

The Administration supports a rule which provides that, in the event of an employee's withdrawal of his own contributions, a plan may require him to forfeit a proportionate part of his benefits derived from employer contributions without thereby being disqualified.

Explanation - The House bill, which prohibits the forfeiture of any benefits if an employee withdraws his contributions, frustrates the design of many contributing plans where the employee's contribution is a prerequisite to the receipt of the employer contributions. Under the Senate bill, however, a plan

may require a total forfeiture of vested employer contributions in the event the employee withdraws any portion of his own contributions. This would produce harsh results and may defeat vested rights entirely where only part of the mandatory contribution is withdrawn to meet an emergency. The Administration recommendation is a compromise between the House and Senate "all or nothing rules" which provides for a forfeiture of a proportionate part of the benefit derived from employer contributions.

Funding for Existing Past Service Liabilities

House Bill

Under the House Bill (Sec. 302), for plan in existence on January 2, 1974, past service liabilities as of the applicable effective date of the new funding rules are to be amortized over 40 years on a level payment basis.

Senate Bill

The Senate bill (Sec. 241) requires that past service liabilities be amortized over 30 years (40 years for multi-employer plans).

Administration Recommendation

The Administration favors the provisions of the Senate bill.

Explanation - Under current regulations in the Internal Revenue Service Code almost all pension plans, as a practical matter, are funding their unfunded liabilities over forty (40) years or less--most at thirty (30) years. Hence, neither the House or Senate bill will have a significant long-term impact on employer contributions. However, because faster amortization will simultaneously strengthen the employer's promise to pay benefits and decrease the risk to the insurance Corporation, such funding shall be encouraged.

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Accelerated Funding

House Bill

Under the House bill (Sec. 302) the additional funding standard requires a contribution of the first years payment in the amount necessary to amortize over a twenty-year period the excess of unfunded vested liabilities over the value of the plan assets if such amount exceeds the contribution required by the minimum funding standards.

Senate Bill

The Senate bill has no comparable position.

Administration Recommendation

The Administration supports the provisions of the House bill.

Explanation - The accelerated funding rule requires a plan with a high proportion of nonforfeitable benefits in relation to assets available to contribute more than under the minimum funding standards. This would minimize the exposure of the termination insurance Corporation and strengthen the pension promises of the employer.

III. TERMINATION INSURANCE

Plans Covered

House Bill

The House bill (Sec. 409) covers plans which have at least 25 participants during any five consecutive years, ten employees with vested benefits over the same period, and a vested benefit ratio of at least ten percent. The House bill also excludes supplementary plans, non-qualified deferred compensation plans for certain employees, plans for sole proprietors or partners with an interest of more than five percent, plans which do not provide for employer contributions subsequent to enactment, and plans for the purchase of certain insurance annuities.

Senate Bill

The Senate bill (Sec. 421) covers all tax qualified defined benefit plans, exclusive of (a) governmental plans; (b) fraternal association plans; and (c) church plans, not opting for coverage, which are not exclusively for the benefit of employees in unrelated trades or businesses or part of a multiemployer plan which involves a non-church employer.

Administration Recommendation

The Administration generally supports the provision of the Senate bill but suggests that plans which do not provide for employer contributions after enactment be excluded.

Explanation - Tax qualified defined benefit plans are required to provide definitely determinable benefits. However, non-qualified plans need not satisfy this rule and it seems inappropriate to insure benefits which are discretionary rather than fixed; hence, the recommendation to limit coverage to qualified plans. With respect to wholly contributory plans, the Administration believes that the imposition of employer liability under the insurance program would be inappropriate inasmuch as, in such plans, the employer has made no undertaking to contribute. The Administration believes that employees covered by plans with fewer than 26 participants are entitled to the same insurance protection as other employees and should be covered under the program regardless of the number of the employees with vested rights or the vested benefits ratio. Further, the burden of maintaining records for purposes of the 25 participant rule would prove onerous for an employer whose workforce fluctuates within a range including 25 employees. Hence, the Administration is recommending coverage of all tax qualified plans, irrespective of size. However, the Administration has recommended elsewhere (see Benefits Covered) the exclusion of substantial owners from insurance. Coupled with recommended Recapture provisions, this exclusion will minimize the incentive for insurance abuse in smaller plans.

Benefits Covered

House Bill

The House bill (Sec. 409) covers benefits which are nonforfeitable (vested) under one of the bill's vesting schedules designated by the plan. The House bill only covers vested benefits if the plan has been covered by termination insurance for five years, although the corporation may cover other plans that have been operative for at least five years. Vested benefits must have been in effect at least five years preceding termination.

Senate Bill

The Senate bill (Sec. 422) covers vested benefits under the plan. There is a phase-in period of three years in order to be fully covered. Vested rights to benefits must have been in effect at least three years preceding termination.

Administration Recommendation

The Administration recommends the following coverage provision:

> Coverage of vested benefits under the plan to the extent those benefits are under plan provisions which have been in effect for at least five years. Benefits of sole proprietors, partners with more than a five percent interest, and shareholders with more than a five percent interest would not be insured, although plan assets

would be allocable to these individuals on the same basis as other plan participants.

Explanation - The recommended position is a compromise between the Senate and House bills. Coverage of vested plan benefits will minimize disruptions and hardships and will tend to produce less arbitrary results. Disruptions and hardship situations would tend to arise if coverage were limited to the benefits vested under one of the bill's vesting schedules, as significant reduction or termination of benefits in pay status could result under plans providing vesting in excess of mandated vesting.

If the mandated vesting rule were adopted, arbitrary results would occur, for example, where each of three identical plans, providing for 20 percent vesting per year of service, designated a different vesting schedule under the bill. Each of the plans satisfies each of the bill's vesting schedules; yet, because of the different vesting schedule designations, the benefits under each of these identical plans would not be insured to the same extent.

Utilization of a five-year waiting period for benefit coverage will reduce the risk of abuse, e.g., large benefit increases prior to termination. Similarly, exclusion of substantial owners from insurance will decrease the incentives for such owners to substantially increase benefits in anticipation of termination.

Insurance Limitations

House Bill

The House bill (Sec. 409) limits insurance payments with respect to an individual to the actuarial equivalent of an annuity beginning at age 65 of $20 per month per year of credited service (adjusted for changes in the social security contributions and benefit base).

Senate Bill

The Senate amendment (Sec. 422) limits the amount payable with respect to a participant to the lesser of 50 percent of average wages during the five preceding years or $750 monthly. This $750 is to be adjusted for changes in the social security contribution and benefit base.

Administration Recommendation

The Administration supports the provisions of the House bill.

Explanation - The service related insurance limits of the House bill tend to favor the lower wage, long-term employee. Higher wage employees, e.g., managers and professionals, without long service would receive less coverage under the House bill than under the wage related limits of the Senate bill. However, such higher wage employees are more likely to have accumulated other assets for their retirement income.

The insurance limits under the House bill are also likely to reduce the liability of the guarantee corporation to abuses. Since many terminations occur in relatively young plans, the service limits of the House bill will, in most cases, mitigate against attempts to sharply raise benefit levels in anticipation of termination. Coupled with the five year waiting period for coverage of amended benefits and employer liability, the recommended insurance limits should provide adequate protection against abuses.

Employer Liability

House Bill

The House bill (Sec. 414) provides that a solvent employer, other than an employer who is a party to a multi-employer plan, is liable to the corporation for insurance benefits paid because of the termination of the employer's plan but only to the extent of 50 percent of the employer's net worth. Employers may avoid employer liability by paying an additional contingent liability premium. There is no provision authorizing private purchase of optional or contingent coverage.

Senate Bill

The Senate bill (Secs. 462-464) provides for employer liability based on 30 percent of net worth. Under the Senate bill, the employer can also pay an additional premium to avoid liability; however, the premium must have been paid for five years and the employer may not remain in business following the termination. Optional or contingent liability insurance coverage may be privately purchased.

Administration Recommendation

The Administration recommends that employer liability be limited to 30 percent of an employer's net worth (determined as fair market value on a going concern basis) 120 days prior to the date of plan termination. If the employer goes out of business within one year after the plan termination, this liability would be further limited to 100 percent of his net worth as of the time he went out of business.

For this purpose, an employer is considered to go out of business if (1) he liquidates all or substantially all of the assets of the business, (2) he assigns all or substantially all of his business' assets for the benefit of creditors, or (3) he abandons the business. Any combination of the foregoing would also be considered "going out of business."

Explanation - Many people have expressed concern that lenders will consider loans made to an employer who maintains an insured plan to be riskier because of the potential liability of the employer to the guaranty corporation. Both the House and Senate bills would generally impose liability to the extent of a percentage (50% and 30%, respectively) of an employer's net worth. While this may be a reasonable limit to keep pension insurance liabilities within the ability to pay of a going concern, it may not protect creditors in the event of a liquidation.

Because an employer's net worth would be determined on a going concern basis under the House and Senate bills, the value placed on the earning power of employer assets would likely exceed any appraised liquidation value. Thus, 30 percent of net worth determined on a going concern basis could exceed the entire net worth determined on a liquidation basis. This would be a common result in the case of employers who

sell services rather than goods. Thus, the addition of such a pension liability could substantially reduce the assets available to satisfy creditor claims in a liquidation.

If liability were limited in accordance with the Administration proposal, lenders would be fully protected because all legitimate claims of creditors would be taken into account before the claim of the guaranty corporation in the event of a liquidation.

Employer liability would not be determined on the basis of liquidation values unless the employer actually went out of business. It is thought that creditors of employers who remain in business are protected by limiting the employer liability to a percentage of net worth.

Employer Liability--Multi-employer Plans

House Bill

The House bill (Sec. 414) provides that an employer who is a party to a multi-employer plan is not liable to the Corporation for any part of the insurance benefits paid because of the termination of such a plan. It does not explicitly provide that, under a multi-employer plan, benefits are to be payable with respect to each participant without regard to the cessation of contributions by the employer who employed that participant.

Senate Bill

The Senate bill provides that:

1. For purposes of plan termination insurance, a plan is not considered to be a multi-employer plan unless, under the plan, benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who employed that participant. (Sec. 401)

2. If a multi-employer plan is terminated, each employer who is a contributor to the plan is liable to the corporation for a proportionate part of the insurance benefits paid because of the termination of the plan. The extent of an individual employer's liability is determined on the basis of the ratio of his contributions to the plan during the five-year period before

termination to the total amount of all employers' contributions to the plan during the five-year period. (Sec. 464)

3. A "substantial employer" is liable to the corporation for such a proportionate part of the benefits paid if he withdraws from the plan and, within five years after his withdrawal, the plan is terminated. In addition, the bill requires that, upon his withdrawal from the plan, a "substantial employer" must either deposit in escrow the amount for which he would be liable to the corporation if the plan were terminated on the date of his withdrawal or furnish a bond for 150 percent of that amount. (Sec. 463) A "substantial employer" is defined as an employer who has made contributions to or under a multi-employer plan for each of two consecutive plan years equal to or exceeding ten percent of total employer contributions to the plan, and who has not, within 24 months after receiving notice that he is a "substantial employer", withdrawn from the plan. (Sec. 401)

Administration Recommendation

The Administration recommends the following:

1. The Senate bill's definition of a multi-employer plan for purposes of plan termination insurance should be retained.

2. The provisions of the Senate bill relating to the withdrawal of a substantial employer should be retained except that "substantial employer" should be redefined to be an employer whose average percentage contribution for the five years preceding withdrawal exceeds ten percent.

3. Upon termination of a plan, liability of smaller employers would be determined under a graded formula based on average percentage contributions for the five years preceding termination. Under this formula, for example, an employer whose average 5-year contribution was one percent would pay 10 percent of his proportional share of employer liability and five percent contributors would pay 50 percent. Employers with more than ten percent average five year contribution would remain fully liable.

Explanation - Employer liability in multiemployer plans is essential to the viability of the termination insurance program. No liability would be an open invitation for healthy employers and their associated unions to agree to raise benefits, wait five years, and then terminate, thereby leaving the insurance corporation fully liable for any unfunded insured benefits.

However, multiemployer plans represent a different situation from single employer plans in a number of respects. First, the withdrawal of an employer from an ongoing multiemployer plan causes other employers in the plan to assume the liability of any unfunded benefits attributable to that employer. Where a substantial employer withdraws, the added burden on the remaining employers may be sufficient to precipitate the termination of the plan. In order to prevent this from happening, substantial employers should be liable over a reasonable period of time following withdrawal.

On the other hand, smaller employers frequently move in and out of multiemployer plans with little impact on the liability of other employers. To saddle these smaller employers with a liability growing out of plan policies over which they had little control would be both inequitable and detrimental to their competitive status. However, to relieve such smaller employers from all liability in the event of plan termination would subject the insurance corporation to the same sort of abuses cited earlier.

The Administration's proposal attempts to strike a balance between these conflicting objectives. For purposes of withdrawal, only substantial employers would retain a liability, so as to discourage subsequent termination of the plan. In the case of termination, the proposal retains employer liability, but limits small employer liability according to a graded schedule, thereby recognizing both the limited voice of such employers in establishing plan policies and the need to reduce incentives to abuse the insurance corporation.

The recommended modification in the Senate definition of a "substantial employer" is aimed at reducing the incentive for employers to withdraw from the plan. The two-year, 24 month notification rule in the Senate bill would encourage affected employers to withdraw prior to achieving "substantial employer" status, leaving other employers to face higher contribution levels which could drive them out as well and eventually bring about the termination of the plan.

Contingent Liability Coverage

House Bill

Under the House bill (Sec. 404) the insurance Corporation may offer contingent liability coverage whereby employees can avoid employer liability by paying an additional contingent liability premium. The bill further prescribes the general terms and conditions of such contingent coverage if it is offered by the Corporation.

Senate Bill

The Senate bill (Sec. 423) authorizes the insurance Corporation to offer similar contingent liability coverage; however, the premium must have been paid for five years and the employer may not stay in business following the termination. Contingent liability coverage may be privately purchased.

Administration Recommendation

The Administration recommends that the following provisions be adopted regarding contingent liability coverage: (1) The Corporation should be given a reasonable period (for example, one year) to determine whether it will make contingent liability coverage available to any class of employers or to any class of plans on terms and conditions decided by the Corporation. (2) During this initial period, an employer should be precluded from taking out such insurance with a private insurer. (3) If, after the expiration of this initial period, contingent coverage is not available to an employer from the Corporation, the employer should be permitted to purchase it from a private insurer. (4) If, subsequently,

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the Corporation makes contingent insurance available to the employer, the employer should not be precluded from continuing his private insurance contract in effect. (5) Employers would in all cases, be allowed to privately purchase supplemental (but not overlapping) insurance to any insurance offered by the Corporation.

Explanation - The Administration recommends that the Corporation be given the flexibility to decide the feasibility of offering contingent liability coverage. However, it is recommended that the Corporation and private insurers not be permitted to insure the same risks. If comparable public and private insurance is available, it is likely that poor risks will be insured publicly and good risks will be insured privately. On the other hand, it does appear desirable to permit an employer to obtain such insurance to the extent that it is not offered by the Corporation.

Allocation Assets

House Bill

The House bill (Sec. 112) provides that, unless the Secretary of Labor prescribes an alternative method which takes into account the antidiscrimination rules of the Internal Revenue Code, assets are to be allocated:

(1) to employee contributions, then

(2) to nonforfeitable benefits in pay status of retired participants and participants at retirement age, then

(3) to other nonforfeitable benefits, and then

(4) to all other accrued benefits.

If assets are not sufficient to satisfy plan liabilities as of the time of termination, earlier plan amendments are disregarded in order of time and assets are allocated accordingly.

Senate Bill

The Senate bill (Secs. 444 and 491) provides that assets are to be allocated:

(1) to voluntary employee contributions, then

(2) to mandatory employee contributions, then

(3) to benefits in pay status for at least three years, based on plan provisions in effect three years prior to termination, and then

(4) to other benefits (with priority to other benefits subject to insurance if termination insurance is payable).

If assets are not sufficient to satisfy, all liabilities within a category would be allocated pro rata.

Administration Recommendation

The Administration recommends that plan assets be allocated in the following order of priority:

(1) to voluntary employee contributions, then

(2) to mandatory employee contributions, then

(3) to benefits in pay status for at least three years, based on plan provisions in effect three years prior to termination, then

(4) to other insured benefits (if termination insurance is payable), then

(5) to other nonforfeitable benefits, based on plan provisions in effect five years prior to termination, then

(6) to other vested benefits, taking into account benefits added by plan amendments adopted within the previous five years in order of adoption (unless assets are exhausted prior to taking such an amendment into account), and then

(7) to all other benefits.

For purposes of category (4), allocations would be made to sole proprietors, five percent partners, and five percent shareholders as if their benefits were insured. For purposes of categories (5), (6), and (7), a reallocation of assets would be required if necessary to prevent the discrimination prohibited by the Internal Revenue Code. If assets were not sufficient to satisfy all liabilities within a category, the assets for that category would be allocated pro rata.

Explanation - The proposed allocation schedule combines the best features of the House and Senate bills. By assigning a relatively low priority to benefits under recent plan amendments, it avoids the situation which occurred in the Studebaker case. There, many employees lost all benefits and other employees received additional benefits because benefits under recent amendments were given a high priority for certain employees.

Because the proposed allocation schedule accords a relatively high priority to benefits insured by the guaranty corporation, it tends to reduce losses under the termination insurance program. Further, the proposed schedule takes the antidiscrimination rules of the Internal Revenue Code into account where they do not increase the losses under the termination insurance program.

Recapture of Benefits

House Bill

The House bill has no provision on this subject.

Senate Bill

The Senate bill (Sec. 445) provides a rule under which a portion of certain accelerated benefit payments could be recaptured in specified circumstances.

Administration Recommendation

The Administration recommends the following provision: Large accelerated benefit payments made during the three-year period preceding plan termination would be subject to recapture by the Corporation if they would increase the liability of the guaranty corporation. Accelerated payments which do not increase the liability of the guaranty corportation by more than $5,000 would not be recaptured.

Explanation - The proposed rule would not generally apply to benefits paid to rank-and-file employees because, in almost all cases, the full amount of the benefits of such employees would be insured and acceleration would not increase the guaranty corporation's liability at all. The rule would, however, prevent gross abuses. For example, it would apply where, immediately before its termination, a plan is amended to increase benefits so that the benefits payable to a particular employee equal the value of all assets of the plan. In that case, but for this rule, the guaranty

corporation would be required to provide benefits for all other participants in the plan. The rule would also prevent abuse where key employees with knowledge of an impending termination obtain full benefits, far in excess of insured amounts, while other employees are limited to insured benefit levels.

Insurance of Owner-Employees

House Bill

The House bill (Sec. 409) withholds insurance from substantial owners (persons who own a sole proprietorship or more than five percent of a partnership, or five percent of either the entire stock or voting stock of the corporation).

Senate Bill

The Senate bill (Sec. 422) requires that the insurance payable to owner-employees be reduced by the owner-employee's pro rata share of any funding deficiency existing as of a termination.

Administration Recommendation

The Administration has previously recommended (see Benefits Covered) that insurance be withheld from substantial owners, as does the House bill.

Explanation - Withholding insurance from substantial owners, coupled with the recommended Recapture provisions, decreases the incentive for substantial owners to abuse the insurance system by introducing large benefit increases in anticipation of termination.

Involuntary Termination

House Bill

Under the House bill (Sec. 411) Secretary of Labor may terminate a plan administratively on one or more grounds specified in the statute.

Senate Bill

Under the Senate bill (Sec. 442) the Pension Benefit Guaranty Corporation may institute involuntary termination proceedings, but such proceedings are in a United States district court.

Administration Recommendation

The Administration strongly supports the provisions of the Senate bill, but would amend it so as to make it possible to avoid a court proceeding if the plan administrator and the insurance Corporation agree as to an appropriate termination procedure.

To accomplish this objective, two changes are necessary in Title IV of the Senate bill. The first, in section 441, would authorize the Corporation to give written approval to the termination proposal of a plan administrator. This approval would serve, in lieu of a notice of sufficiency, as authority for him to proceed with the termination. The second change, to section 442, would authorize the Corporation, whenever it finds termination to be necessary, to approve a termination

proposal from the plan administrator rather than to go to court. These changes would provide additional options; they would not be mandatory. The Corporation would retain the right to seek a court termination if it cannot reach agreement with a plan administrator, and an administrator could seek court review if the Corporation turned down a request for voluntary termination.

Explanation - When a termination is instituted by the Corporation, or where there is an insufficiency of assets, there is no reason to burden U.S. district courts with litigation if there is no issue in dispute between the parties. If the Corporation is satisfied to have the termination proceeding handled by the plan administrator and the administrator is willing to manage the termination in a manner approved by the Corporation, there would be no contest to be decided. This might be the case, for example, if the Corporation were well-satisfied with the competence, responsibility and honest of a particular plan administrator and the administrator has submitted to the Corporation an acceptable proposal for conducting the termination. Under such circumstances, no useful purpose would be served by going to court, and the limited resources of the courts, the Corporation, and the plan would be spared the costs and burdens of litigation.

Appointment of the Insurance Corporation as Trustee

House Bill

Under the House bill (Sec. 411), in the case of a plan termination ordered by the Secretary of Labor, the Secretary may order the Corporation to administer the termination or may order separate administration by a receiver nominated by the Corporation.

Senate Bill

Under the Senate bill (Secs. 441 and 442), in the case of involuntary terminations or in voluntary terminations where there is an insufficiency, a court-appointed trustee administers the termination, including both management and liquidation of assets.

Administration Recommendation

The Administration supports the court-based involuntary termination procedures provided for in the Senate bill. However, the Administration strongly recommends that, in the case of involuntary terminations or in voluntary terminations involving an insufficiency, the Pension Benefit Guaranty Corporation be the trustee for purposes of administering the termination.

Explanation - Under the Senate bill, the court-appointed trustee has full responsibility for administration of a plan both prior and subsequent to the issuance of a court decree to

terminate the plan (as applied for by the Insurance Corporation). Trustee responsibility would not only involve management of the plan assets but would also involve a determination of the mode of settlement to be made with plan participants; e.g., lump sum distribution, purchase of annuities, etc.

The Administration believes that the vesting of these responsibilities in the hands of a trustee other than the Insurance Corporation is not in the interests of either the Corporation or plan participants. In the first place, where the Corporation is involved in a termination, any gains or losses in the assets of the plan in termination will directly affect the unfunded insured benefits payable by the Corporation. Since the Corporation's money is at stake, the Administration believes that the Corporation should have the authority to manage the plan's assets. Secondly, a court-appointed trustee may choose to settle benefit claims with participants in ways which are not in the best interests of participants. For example, the court-appointed trustee may propose lump-sum settlements where the Corporation could offer deferred annuities, secured through competitive bidding, at more favorable rates than an individual participant could purchase for himself.

A final consideration is just the general potential for conflict and friction which would result in situations where

the trustee and the Insurance Corporation are not of one mind. Problems of this sort arose with such frequency in the insurance of Savings and Loan Associations that in 1968 the Federal Savings and Loan Insurance Corporation had existing law changed so that the FSLIC would be the trustee in the liquidation or merger proceedings. Previously, such proceedings were administered by a court-appointed trustee.

Initial Premiums

House Bill

Under the House bill (Sec. 405), one-half of the premium for a particular plan is determined on the basis of the plan's unfunded insured vested liabilities and one-half of the premium is determined on the basis of the plan's total insured vested accrued liabilities. Rates differ for single employer plans and multi-employer plans.

Senate Bill

The Senate bill (Sec. 403) provides for separate premium rates for single employer and multi-employer plans but it sets a flat rate of $1 per participant per year for both types of plans for the first three years. Under the Senate bill, the premium is collected as a tax.

Administration Position

The Administration recommends a flat $1 head tax per participant per year for both single and multi-employer plans during the first three years of operation, i.e., the Senate approach.

Explanation - The head tax approach recommended will, in the Administration's judgment, be the easiest approach to administer for both plan administrators and the insurance Corporation. It can go into effect promptly and will produce a total premium income which can be estimated within reasonable limits. These aspects--simple calculation, prompt collection, and a fairly accurate estimate of how much money will be raised--will be very

important for a sound and effective inauguration of the insurance program.

In this respect, it should be recognized that the House approach--which attempts to reflect insurance risk by basing premiums on insured liabilities--would require that plans compute their insured liabilities which, depending upon the coverage and limitations in benefits, could be difficult and costly.

While the head tax does very little to reflect insurance risk with regard to any given plan, it does not create serious inequities because it is virtually a nominal rate and will be in effect for only a few years. Any inequities in the early years will be smoothed out over the long run when the program operates under a more risk-related premium structure.

The Administration recognizes that there may be justification for having a different initial premium for multiemployer plans than for single employer plans. However, because of the limited study data, and because multiemployer plans, unlike single employer plans, will have a more restricted employer liability, the Administration recommends a uniform initial rate. Any inequities which this might introduce would, in the long run, be eliminated as experience based premium rates are introduced.

Transfer of Premiums Collected from Treasury to PBGC

House Bill

The House bill (Sec. 404) authorizes the insurance corporation to collect premiums, assessments, fees or any other assets derived from operations of the corporation and deposit them in the Plan Termination Insurance Trust Funds.

Senate Bill

The Senate bill (Sec. 403) authorizes appropriations to the Pension Benefit Guaranty Fund in an amount equal to the insurance premiums, collected as an excise tax, and taxes on failure to meet minimum funding standards.

Administration Recommendation

The Administration recommends an automatic appropriation to the Pension Benefit Guaranty Fund of the monies collected as tax premiums and penalties.

Explanation - An automatic appropriation of premiums and tax penalties will obviate the necessity of seeking such an appropriation from the Congress each year. Congress will still retain substantial fiscal control over the Corporation and its operations through its control over premiums.

IV. FIDUCIARY STANDARDS

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Disclosure of Tax Return and Tax Information

House Bill

The House bill has no such provision.

Senate Bill

The Senate bill (Sec. 706) adds to IRC Section 6103 a new subsection (g) providing that "any return" filed regarding a plan of deferral compensation "shall be open to inspection by the proper officers of the Pension Benefit Guarantee Corporation".

Administration Recommendation

The Administration strongly supports the Senate provision modified to include inspection by the Secretary of Labor or his delegate in addition to inspection by the insurance Corporation. The Administration further recommends that the conference report include clarifying language to make it clear that the term "return" includes such investigatory data as the revenue agent report.

Explanation - Under the compromise proposal recommended for enforcement of fiduciary standards, it will be essential that the Department of Labor have full access to tax information and investigatory reports related to prohibited transactions uncovered by the IRS. Without such information, the Labor Department would have to resort to a highly duplicative investigation of its own.

The same information will also need to be available to the insurance corporation in instances where fiduciary breaches may warrant the corporation seeking to terminate a plan.

Prohibited Transactions

House Bill

Under the House bill (Sec. 111) a transfer of plan property to, or the use of such property by a party in interest is not prohibited if such transfer or use is in return for no less than adequate consideration. Similarly, the acquisition of property or services from a party in interest is not prohibited if it is in exchange for no more than adequate consideration. "Adequate consideration" is defined, for purposes of property other than securities, as the fair market value of the asset as determined in good faith by the fiduciary. The House bill does not ammend the prohibited transaction section in the IRS Code.

Senate Bill

Under the Senate bill (Sec. 522) such transfers and acquisitions are prohibited irrespective of adequacy of consideration. Exemptions are available to permit transactions which, although falling into the prohibited category, are found to be innocuous. The Senate bill amends the prohibited transaction section in the IRS Code.

Administration Recommendation

The Administration strongly favors the Senate provisions.

Explanation - The "adequate consideration" requirement in the House bill offers little protection for plan participants

or the integrity of plan funds because the Government would have the difficult burden of proving that the fiduciary's determination of adequate consideration was not made in good faith. The better approach is to prohibit all such suspect transactions and avoid inequitable results through the exemption procedure.

Moreover, under the House bill it would be possible for a party in interest to enter into transactions with the trust which neither jeopardize the plan or plan participants, but which may jeopardize the tax system. Specifically, employers may sell property to the trust at adequate consideration in order to obtain a tax shelter for both property income and capital gains. The Senate bill, on the other hand, would specifically exclude such transactions, thereby closing a much abused tax loophole frequently utilized by small plans.

Diversification of Investments

House Bill

Under the House bill (Sec. 111) fiduciaries must diversify investments so as to minimize the risk of large losses unless, under the circumstances, it is prudent not to do so. Fiduciaries are also subject to prudent man rule.

Senate Bill

Under the Senate bill fiduciaries must comply with the prudent man rule.

Administration Recommendation

The Administration supports the prudent man rule but opposes the diversification requirement in the House bill.

Explanation - Diversification of investments to minimize potential of loss has historically been interpreted as being one of the requirements of a prudent man acting as a fiduciary. Since the "prudent man rule" will apply to fiduciaries, a separate diversification requirement is not only redundant, but would also tend to create confusion in that it may be construed as evidence of Congressional intent to provide a standard different from that normally prescribed of fiduciaries. Moreover, the confusion created by separately stating this requirement would likely generate a large volume of costly and unnecessary litigation.

V. REPORTING & DISCLOSURE

Consolidation of Reports and Returns

House Bill

The House bill has no such provision.

Senate Bill

The Senate bill has no such provision.

Administration Recommendation

To ease the reporting burden, the Administration strongly recommends that the Secretary of Labor and the Secretary of the Treasury be authorized to direct and allow plan administrators to file any annual report or other periodic report or returns (including the premium tax return), which otherwise would be required under this Act to be sent separately to the Secretary of Labor, The Secretary of Treasury, or the Pension Benefit Guaranty Corporation, as a consolidated annual report/return sent to one location specified by the Secretaries. Implementing this recommendation would require that the filing due date for any tax return be determined by regulations established by the Secretary of the Treasury and Secretary of Labor.

Explanation - The Administration feels it essential to minimize the burdens placed on plan administrators by the numerous reporting requirements established under either the House or Senate bills. The Administration's recommendation would make it possible to consolidate all reporting requirements into a single report, using forms designed to avoid the filing of largely duplicative data to separate departments. Not only

would such a system be simple and efficient from the standpoint of plan administrators, but it would result in significant economies for the Federal Government as well.

Agency to Receive Reports on Separated Employees With Vested Benefits

House Bill

The House bill (Secs. 512 and 103) requires reports to both Secretary of Labor and Secretary of the Treasury on each individual separated from employment with vested benefits, giving name, amount of benefits, etc. Each Secretary would transmit information to the Social Security Administration, which in turn must give it to such individual when he applies for Social Security benefits or information on his account.

Senate Bill

The Senate bill (Sec. 151) has essentially the same provisions but reports to Treasury only.

Administration Recommendation

The Administration recommends that reports on separated employees, filed as part of an annual plan registration statement, be filed with the Secretary of Labor. Such information shall be transmitted to the Secretary of Health, Education and Welfare in order that he may carry out his responsibilities under the Act.

Explanation - The Administration has previously recommended (see Consolidation of Reports and Returns) that, all periodic reports and returns be consolidated into a single annual report/return. However, for purposes of establishing and enforcing

specific information requirements under the Act, the Administration believes that the Labor Department should have primary control over information relating to separated employees with vested benefits and other information as may be required as part of an annual plan registration statement. Information on separated employees will provide important data and statistics on the private pension system in support of studies, analyses, and future policy development activities.

Forms For Reporting

House Bill

Under the House bill (Sec. 505) the Secretary of Labor is specifically barred from requiring the use of prescribed forms for the submission of required information.

Senate Bill

Under the Senate bill the Secretary of Labor has the power to require the use of prescribed forms for the submission of required information.

Administration Recommendation

The Administration favors the Senate bill.

Explanation - The Secretary of Labor now has authority to prescribe the form and detail for presenting the information required in the plan description and annual report. Without this authority, enforcing the reporting provisions would be greatly hindered. If plan administrators are permitted to report in any sequence of information, in any format they wish, and on any size or type of paper, the Labor Department's burden in processing and filing, much less analyzing, the reports would be tremendous. The lack of forms would seriously impair the Department's efforts to use automatic data processing in the handling of the large numbers of reports to be received. Other functions, such as

copying portions of reports on request of participants or others and abstracting data to be used for research and for establishing and carrying out program priorities, also would become much more burdensome and costly.

As a matter of the history of Federal disclosure law in the welfare and pension plan field, the denial of authority to prescribe "form and detail" would be a great step backward to the original WPPDA. The 1958 law omitted such authority, and the result was administrative chaos. The 1962 amendments gave the authority to the Secretary and it has been very helpful in creating order in the reporting area, from the viewpoints of both the Labor Department and plan administrators. Furthermore, such authority is essential, if the Labor Department and the Internal Revenue Service are to effectively coordinate their reporting requirements and possibly even achieve a single report.

Exemption and Variation Power Relating to Reports

House Bill

Under the House bill (Secs. 104 and 501), the Secretary of Labor shall exempt from annual filing requirements any employee benefit plan with fewer than twenty-six participants. He may also exempt any plan with less than 100 participants. In addition, he may exempt any class of welfare plans and, after affording a hearing, may on his motion or the petition of an administrator, grant an exemption or variance from the publication requirements to plan participants and beneficiaries if the requirement would (1) substantially increase costs, (2) curtail benefits, or (3) impose an unreasonable administrative burden.

Senate Bill

Under the Senate bill (Sec. 502) the Secretary of Labor may by regulation, as to any class or type of employee benefit plans, grant an exemption for all or part of the reporting, disclosure, and publication requirements of the Act, or provide a variance in the form or manner of reporting, disclosure, and publication, if he finds that such is necessary or appropriate and consistent with the purposes of the Act. He shall prescribe by general rule simplified reports for plans which cover less than 100 participants and which maintain an employee benefit fund with less than $100,000 in assets, except that he is not precluded

from requiring any information or data from such plans where he finds such necessary to carry out the purposes of the Act.

Administration Recommendation

The Administration recommends that, in lieu of the above, the following language be used:

> ( ) The Secretary of Labor may by regulation, as to any class or type of employee benefit plans --
>
> (1) grant an exemption from all or part of the reporting, disclosure, and publication requirements of this Act; or
>
> (2) provide a variance in the form or manner of reporting, disclosure, and publication required by this Act; or both
>
> if he finds that the exemption or variance is necessary or appropriate and consistent with the purposes of this Act. Any such exemption or variance may be granted on such conditions as the Secretary may deem appropriate.

Explanation - The exemption and variance provision recommended is intended to permit flexibility in administering the reporting provisions of the Act. The problem of exemption and variation in reporting is not entirely related to the size of the plans, for some of the information required by the bill to be reported to the Department of Labor is pertinent regarding one type of plan but not another and requiring all information for all types of plans would be foolish.

For example, many of the welfare plans covered by the legislation involve nothing more than an insurance contract providing group life insurance, travel insurance, or hospitalization or medical insurance with the employer paying the

entire premium. Especially with respect to such welfare plans which are not experience rated, it serves little purpose to have annual reports in the Labor Department files so long as employees covered by the policies are in a position to know what their rights under the policies are.

Variations may offer a way to cut down duplication of requirements for reports to be filed with both the Labor and Treasury Departments, and consolidation of reporting duties might thereby be feasible.

Obviously, the proposed exemption and variation authority would be useful in alleviating the paperwork burden which the legislation imposes on employers and other plan administrators as well as on the Department of Labor.

VI. PORTABILITY

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Central Portability Fund

House Bill

The House bill has no provision establishing a central portability fund. However, the bill permits an employee to transfer the credited balance of his retirement account with an employer plan to an Individual Retirement Account [Sec. 701(e)].

Senate Bill

The Senate bill (Sec. 301-310) provides for a voluntary governmental portability fund (administered by the insurance Corporation) which will enable an employee who changes jobs to consolidate all of his vested retirement benefits into a single account maintained in a central fund. The bill also permits an employee to transfer the credited balance of his retirement account with an employer plan or in the central fund to an Individual Retirement Account (Sec. 701).

Administration Recommendation

The Administration opposes the establishment of a governmental portability fund, but strongly endorses the provisions permitting transfer of funds from an employer plan to an Individual Retirement Account. The Administration also endorses a provision authorizing the Secretary of Labor to conduct a study of means to achieve portability.

Explanation - The Administration believes that the provisions establishing Individual Retirement Accounts, coupled with appropriate funds transfer and tax-rollover provisions, will accomplish the same purpose for individuals as the central portability fund. Accordingly, the Administration cannot support the establishment of such a fund. However, the Administration believes that portability is generally desirable and would support study of mechanisms for further expansion.

Registration With Social Security

House Bill

Under the House bill (Sec. 1031 and 1032) each funded plan, which otherwise must report to the IRS, must file an annual statement regarding individuals who have terminated employment and who have a right to a deferred vested benefit in the plan. The Social Security Administration is to maintain records of the retirement plans in which individuals have vested benefits, and is to provide this information to individuals and beneficiaries on request and also on their application for Social Security. These provisions cover multi-employer plans only to the extent provided in regulations.

Senate Bill

The Senate bill (Sec. 152) has substantially the same provisions except that it does not include any special multi-employer plan provisions.

Administration Recommendation

The Administration generally supports the registration provisions of the House bill (which cover multi-employer plans only to the extent provided in regulations) but would limit the Social Security Administration record keeping requirement to the names and addresses of employers with whom an individual has a deferred vested benefit.

Explanation - The Administration understands that the principal objective of the registration provisions is to assist employees in both remembering and locating former employers with whom they have a vested benefit. Changes in employer identity, address and the difficulty for employees of maintaining records over long periods of time currently make it extremely difficult for many employees to claim the benefits promised. While the Administration endorses this objective, it believes that requiring SSA to maintain additional records as to the type and amounts of benefits promised will add little to the basic objective and will create numerous misunderstanding between SSA and employees regarding benefit amounts. Such misunderstandings may arise as a result of the dynamic nature of many benefit promises, e.g., money purchase accounts, variable annuities, and should, in the Administration's judgment, be resolved between the employer and employee.

VII. SPECIAL RULES

Joint and Survivor Annuity Requirements

House Bill

Under the House bill (Sec. 102) a plan is required to provide joint and survivor annuity benefits for employees who have not elected another form of benefit and who have been married for the five-year period preceding income commencement. The employee may elect another form of benefit within a reasonable time before income commencement. However, an election made within the two-year period preceding his death is disregarded.

Senate Bill

Under the Senate bill (Sec. 261) an employee may make an election to receive benefits in a form other than a joint and survival benefit only during the two-year period preceding income commencement. No provision is made for disregarding elections during a specified period preceding the employee's death.

Administration Recommendation

The Administration generally supports the House bill but would recommend deletion of the rule under which elections may be disregarded and a reduction of the five-year marriage requirement to two years.

Explanation - The Administration sees no justification for the disregard rule. Inherent in the choice which an employee makes between an individual and a joint and survivor annuity

is the chance that he may make what is ultimately an unfortunate decision.

The recommendation for a two-year marriage requirement stems from the fact that two-year incontestability periods and suicide clauses currently characterize most State laws governing life insurance. Inasmuch as two years is generally regarded as sufficient to mitigate against "death-bed" marriages and other similar abuses, the Administration sees no compelling reason for a longer period.

Joint and Survivor Annuity Requirements; Preretirement Death Benefit

House Bill

Under the House bill (Sec. 1021) if an employee dies after his earliest retirement age but before he reaches pay status, the plan must provide a benefit for his spouse.

Senate Bill

The Senate has no comparable provision.

Administration Recommendation

The Administration opposes the provision of the House bill which provides for a preretirement death benefit. Instead, it endorses the Senate bill approach of guaranteeing a survivor benefit after the participant reaches normal retirement age and thus is eligible for his retirement income.

Explanation - Compliance with the survivor benefit provision under the House bill will be very costly and will divert funds from retirement protection to often unneeded life insurance. The fact that the survivor benefit is payable after reaching the earliest retirement date will discourage employers from establishing early retirement dates in order to avoid the extra cost.

VIII. MISCELLANEOUS

Preemption of State Laws

House Bill

The House bill (Sec. 514) preempts state law in the areas of fiduciary responsibility, disclosure and, in the case of plans described in Sections 201 and 301 of Title I, forfeitability of benefits, funding, adequacy of financing, portability, and insurance of pension benefits.

Senate Bill

The Senate bill (Sec. 699) would supersede all state laws that relate to matters regulated by the Act or the Welfare and Pension Plans Disclosure Act.

Administration Recommendation

The Administration has prepared a preemption clause, which is attached hereto, which makes explicit the areas of state law to be preempted. They are as follows: participation, vesting, funding, disclosure and fiduciary standards, portability, termination insurance, enforcement and additional plan requirements (as set out in House bill Section 1021 which includes joint and survivor annuity requirements and provisions against alienation of benefits). The preemption section should make clear that a state could not set minimum standards for retirement plans in the areas listed above; however, it could regulate the tax aspects of retirement plans.

Explanation - The preemption provisions under the House bill are extremely vague, while the Senate bill is too broad since it preempts all state laws covering areas regulated under the Act, which includes the tax aspects of retirement plans. Accordingly, the Administration has submitted clarifying language.

EFFECT ON OTHER LAWS

It is hereby declared to be the express intent of Congress that, except for actions authorized by Section (fill in Section which permits a participant to bring a civil action in State or Federal court) the provisions of (list the Titles or Sections which deal with participation, vesting, funding, reporting, disclosure and fiduciary standards, termination insurance, enforcement and additional plan requirements (as set out in House bill Section 1021) or the Welfare and Pension Plans Disclosure Act, shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the regulation of participation, vesting, funding, reporting, disclosure and fiduciary standards, termination insurance, enforcement and additional plan requirements (as set out in House bill Section 1021) or subject matters regulated by the Welfare and Pension Plans Disclosure Act, except that nothing shall be construed--

(1) to exempt or relieve any employee pension benefit plan not subject to (list Titles or Sections above) or the Welfare and Pension Plans Disclosure Act from any law of any State;

(2) to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary; or

(3) to alter, amend, modify, invalidate, impair, or supersede any other law of the United States.

Notwithstanding the provisions of this section, a State shall have the authority to prescribe rules and regulations governing the tax qualification and taxation of contributions, distributions or income, of an employee pension benefit plan (including a trust forming a part of such plan) as defined in the Welfare and Pension Plans Disclosure Act (House bill).

Representation in Civil Litigation

House Bill

Under the House bill (Sec. 503) attorneys appointed by the Secretary of Labor may represent him in all civil actions except before the Supreme Court and the Court of Claims.

Senate Bill

The Senate bill (Sec. 692) provides that attorneys appointed by the Secretary of Labor shall represent him in all civil actions except before the Supreme Court and the Court of Claims.

Administration Recommendation

The Administration recommends that the following language be substituted for lines 1-5 on page 152 of H.R. 2:

> Except as provided in Section 518(a) of Title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

Explanation - Responsibility for protection of the Government's interests in litigation should be centralized in the Department of Justice. Various statutes, most particularly 28, U.S.C. 516, clearly reserve litigating authority within the Department of Justice, thus insuring that the Government takes a consistent and uniform position in its litigation and that

representation of the Government's interests in court comes from one source.

The suggested language above is identical to that in the Occupational Safety and Health Act of 1970, and provides a basis for agency cooperation in carrying out the specific litigating responsibilities in this legislation while preserving the overall litigating authority of the Justice Department.

[COMMITTEE PRINT]

SUMMARY OF DIFFERENCES BETWEEN THE SENATE VERSION AND THE HOUSE VERSION OF H.R. 2

TO PROVIDE FOR PENSION REFORM

PREPARED FOR THE USE OF

THE HOUSE AND SENATE CONFEREES ON H.R. 2

PART ONE

PARTICIPATION, VESTING, FUNDING, ACTUARIES, JURISDICTION, AND PORTABILITY

MAY 15, 1974

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PARTICIPATION AND COVERAGE

Page numbers†

1. Plans Subject to the Provisions

House bill.—

(1) Under title I the new participation and coverage rules are to be administered by the Secretary of Labor. The participation and coverage rules of title I are to apply to plans established or maintained by employers or employee organizations engaged in or affecting interstate commerce. — 73 (166)

(2) Under title II, the new participation and coverage rules are to be administered by the Secretary of the Treasury. The participation and coverage rules of title II are to apply to qualified pension, profit-sharing, and stock bonus plans. — 163 (A–2)

Senate amendment.—The new participation and coverage rules are to be administered only by the Secretary of the Treasury and are to apply to qualified pension, profit-sharing, and stock bonus plans. In addition, the Senate amendment generally prohibits a person engaged in a business that affects interstate commerce from having a nonqualified plan. — 365, 388, 419 (167, 170, A–2)

Staff comment.—This is a jurisdictional matter discussed below.

2. Exceptions to Coverage

House bill.—Title I of the House bill exempts the following plans from the new participation and coverage rules: — 17, 18, 74 (36, 41, 168)

(1) governmental plans, including Railroad Retirement Act plans;

(2) church plans which do not elect coverage (see below, *3. Exemption for Church Plans*);

(3) non-U.S. plans primarily for aliens;

(4) unfunded plans maintained by the employer primarily to provide deferred compensation for select management or highly-compensated employees;

(5) union plans which have not provided for employer contributions after the date of enactment;

(6) supplementary plans; and

(7) plans established by fraternal societies or other organizations described in section 501(c)(8) or (9) of the Internal Revenue Code.

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†"Page numbers" outside parentheses are the numbers of the relevant pages in the print of H.R. 2 dated March 4, 1974. The first 353 pages, in linetype, represent the bill as passed by the House of Representatives; the remaining pages, in italic type, constitute the Senate amendment.

"Page numbers" inside parentheses are the numbers of the relevant pages in the comparative prints prepared by the staffs.

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169, 216 (A–10, A–78) Title II of the House bill exempts the following plans from the new participation and coverage rules:

(1) government plans, including Railroad Retirement Act plans (however, in order to remain qualified, such plans must meet requirements of present law);

(2) church plans which do not elect coverage (however, in order to remain qualified, such plans must meet requirements of present law), see below, *3. Exemption for Church Plans;*

(3) non-U.S. plans primarily for aliens are excluded only if they are nonqualified plans (see below, *10. Eligibility—Non-resident Aliens*);

(4) unfunded plans generally are excluded because they are nonqualified plans;

(5) no corresponding provision (plan excluded if it is nonqualified);

(6) no corresponding provision (plan excluded if it is nonqualified); and

(7) no corresponding provision (plan excluded if it is nonqualified).

388, 419 *Senate amendment.*—The Senate amendment deals with the categories of plan exclusions from the new participation and coverage rules as follows:

(1) nonqualified governmental plans are to be excluded;

(2) nonqualified church plans are to be excluded;

(3) nonqualified non-U.S. plans primarily for aliens are excluded if the plans' funds are maintained outside the United States;

(4) exclusion for nonqualified plans which either require benefits to be paid in full within 5 years after the benefits accrue or which provide benefits only for corporate officers or for persons who own at least 3 percent of the stock of the corporate employer;

(5) no corresponding provisions;

(6) no corresponding provision; and

(7) nonqualified plans of section 501(c) (8) or (9) organizations are to be excluded, but only if no employer contributions.

Staff comment.—

(1) The conferees may wish to adopt the rules of title II of the House bill with respect to governmental plans. The conferees may also wish to adopt the rules of title I of the House bill with respect to the railroad retirement plans.

(2) The conferees may wish to adopt the rules in title II of the House bill with respect to church plans (see below, *3. Exemption for Church Plans*).

(3) The conferees may wish to adopt the rule of title I of the House bill excluding non-U.S. plans for aliens, but additionally require that to be excluded substan-

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tially all of the participants and beneficiaries of a plan must be nonresident aliens.

(4) The conferees may wish to adopt the rules of title I of the House bill.

(5) The conferees may wish to adopt the rules of title I of the House bill.

(6) The conferees may wish to exclude unfunded plans which provide benefits in excess of the limitations on contributions and benefits which may be adopted in the Internal Revenue Code, and which are plans for the highly-paid.

(7) The conferees may wish to adopt the rule of the Senate amendment; in addition, the conferees may wish to provide an exclusion for plans established and maintained by an organization described in section 501 (c) (18) of the Internal Revenue Code.

(8) The conferees may wish to consider clarifying that title I does not apply to employer or union sponsored individual retirement accounts, or to section 403 (b) plans.

3. Exemption for Church Plans

House bill.—Title I and title II both contain points (1) through (4) listed below. Title II also contains point (5).

(1) An exemption is provided for church plans from the new participation and coverage standards. — 74, 170 (168, A–10)

(2) The above exemption does not apply to a plan primarily for employees of unrelated trades or businesses or to a multiemployer plan if one or more of the employers is not a church. — 17, 216 (37, A–78); 18, 217 (37, A–79)

(3) However, if on January 1, 1974, a church maintained a plan that covered employees of tax-exempt agencies of the church, then the employees of that agency are to be treated as employees of the church (in effect, the agencies are to be treated as part of the church, under the multiemployer rule of point (2) above).

(4) A church plan may elect irrevocably to come under the new standards. — 75, 170 (169, A–11)

(5) Title II provides that a church plan which wants qualification must continue to meet the participation standards of present law. — 170 (A–10); 365, 419 (170, 168)

Senate amendment.—The Senate amendment exempts church plans from the participation and coverage standards, only if the plans are not tax-qualified.

Staff comment.—The conferees may wish to adopt the House bill's rules on all five points listed above.

4. General Rule

House bill.—Title I and title II rules are the same. — 75, 163 (170, A–2)

(1) Plans may not (because of age or service) exclude any employee who (a) has attained age 25 and has completed one year of service or (b) has completed

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3 years of service (even though the employee is not yet age 25).

(2) However, any plan may require 3 years of service of all employees before participation, if it provides full vesting immediately on participation.

365 (170, A–2) *Senate amendment.*—Plans may not (because of age or service) exclude any employee who has attained age 30 and completed one year of service. (A 5-year "lookback" rule is also provided; see VESTING, item 4, below.)

Staff comment.—

(1) The conferees may wish to consider agreeing to the House rule of age 25* and one year of service ((1)(a)), but deleting the requirement that no employee with three years of service could be excluded from the plan ((1)(b)). (In lieu of this second rule, a 3-year lookback to age 22 could be provided for purposes of the vesting schedule, as discussed below.)

(2) Any plan which provides full immediate vesting for all participants (similar to the House bill) could be permitted to adopt a 3-year service requirement.

5. Maximum Age Requirement

76, 164 (171, A–3) *House bill.*—Title I and title II rules are the same.

(1) The exclusion of employees, because they are too old, is forbidden unless (a) a plan is a defined benefit plan and (b) the employee is within 5 years before normal retirement age when he begins employment.

Senate amendment.—The amendment does not provide any authority to exclude older employees, as such, under the plan.

Staff comment.—The conferees may wish to adopt the House bill's rules.

6. Year of Service Defined (Generally Relates Also to Vesting)

94, 164 (211, A–4) *House bill.*—Title I and title II rules are the same.

(1) The definition of year of service generally is left to regulations.

(2) However, no employee with more than 17 months of continuous service may be excluded from the plan on account of service, and

(3) the average employee (assuming hypothetically that employees are hired at the same rate each day throughout the year) could not be excluded from the plan for more than 12 months on account of service.

(4) The regulations are to take account of special industries whose work schedules are measured in hours, days, weeks, or months.

*There was not full staff agreement on this point.

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Senate amendment.—An employee is considered to have performed a year of service if he was employed for more than 5 months during the year, for at least 80 hours each calendar month. 366 (211, A–4)

Staff comment.—The conferees may wish to provide the following rules in this area:

(a) *Participation and coverage.*—Any individual who is employed on or after the anniversary date of his hire, and works for 1,000 hours during this initial 12-month period cannot be excluded from the plan on account of age or service after the earlier of (i) the first day of the next plan year following the anniversary date of his hire (if he is still employed on such date), or (ii) 6 months from the anniversary date of his hire (if he is still employed on such date). If he fails to work 1,000 hours in the initial 12-month period, he starts over toward meeting his 1,000 hour requirement in the next 12-month period.

(b) *Vesting schedule.*—A plan participant is to move up one year on the statutory minimum vesting schedules at the end of each year (calendar year, plan year, or other 12-consecutive-month period as designated by the plan, subject to regulations) during which the participant has completed at least 1,000 hours of service ("hours of service" to be defined in regulations, to take account of special industries, such as the maritime industry).

(c) *Breaks in service.*—A one-year break in service occurs in any year where the employee has less than 500 hours of service.

(d) *Benefit accrual.*—

(i) In general, the plan may use any definition of the term "year of service" for purposes of benefit accrual which the plan applies on a reasonable and consistent basis.

(ii) However, the plan must accrue benefits for less than full time service on at least a pro rata basis.

(iii) A plan is not required to accrue any benefit for a participant who works less than 1,000 hours during the year.

7. Coverage of Seasonal and Part-time Employees

House bill.—Title I and title II rules are the same. 95, 165, 168

(1) If a seasonal employee's customary employment is at least 5 months, his normal season is to be treated as a year. (211, A–4, A–8)

(2) The definition of a part-time employee, who may be excluded from the plan, is left to regulations.

Senate amendment.—A plan may exclude an employee whose customary employment is for not more than 80 hours in any one month, or not more than 5 months in any one year. 367 (212, A–8)

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Staff comment.—The staff comment on this issue appears above in item 6.

8. Breaks in Service (Generally Relates Also to Vesting)

95, 166 (212, A–6)

House bill.—Title I and title II rules are the same.

(1) If an employee has a one-year break in service, the plan may require a one-year reentry period before his pre-break and post-break service are aggregated under the plan.

(2) Subject to this one-year waiting period, all pre-break service of any employee who is at least 50 percent vested must be taken into account in determining the employee's right to participation and vesting and accrued benefit.

(3) Generally (also subject to the one-year waiting period) all service of an employee who has at least 4 years of consecutive service must also be taken into account.

(4) However, point (3) may be disregarded where such an employee (who is not at least 50 percent vested) has a break in service of at least 6 years.

371, 374 (176, 180, A–6, A–13, A–16)

Senate amendment.—

(1) Generally pre-break and post-break service are to be aggregated for purposes of participation and vesting and accrued benefit.

(2) However, a plan could require 3 years of consecutive service for attaining the first step (the 25-percent step) on the vesting schedule.

(3) Also it is intended (Finance Committee Report, p. 49) that after a 10-year break in service, the record-keeping burden would shift to the employee.

Staff comment.—The conferees may wish to consider agreeing to the following rules.

(a) Point (1) of the House bill might be agreed to. However, it could also be provided that once an employee had satisfied the one-year re-entry period, he would receive a full "look-back" (for purposes of vesting and accrued benefit) for this year of service.

(b) In the case of an individual account plan, if any employee has a one-year break in service, his vesting percentage in pre-break benefit accruals does not have to be increased as a result of post-break service.

(c) Subject to rules (a) and (b), once an employee has achieved any percentage of vesting, then all of his pre-break and post-break service must be aggregated for all purposes.

(d) For all nonvested employees (and subject to rules (a) and (b)), a rule of parity would apply and the employee would not lose credits for his pre-break service until his period of absence equaled his years of covered service.

9. Eligibility—Collective-Bargaining Units, Air Pilots — *Page numbers*

House bill.—(1) Title II provides that employees who are under a collective bargaining agreement can be excluded for purposes of the breadth-of-coverage requirements, if the employees are excluded from the plan and there is evidence that retirement benefits have been the subject of good-faith bargaining. (This applies to both corporate plans and H.R. 10 plans.) — 168, 242 (A–9, A–114)

(2) Also, title II provides that air pilots represented in accordance with the Railway Labor Act may bargain separately for corporate tax-qualified employee plan benefits, without regard to the breadth-of-coverage requirements.

Senate amendment.—Very similar, except that—

(1) the amendment requires that there is evidence that retirement benefits were the subject of good-faith bargaining at the most recent contract negotiations and — 367, 418 (A–9, A–114)

(2) there is no provision concerning air pilots.

Staff comment.—

(1) The conferees may wish to adopt the House bill's rules as to the breadth-of-coverage rules for collective bargaining units. The conferees may wish to make it clear that if a union group is excluded either for (a) breadth-of-coverage purposes or (b) an antidiscrimination purpose, then it must be excluded for both sets of purposes.

(2) The conferees may wish to adopt the House rule as to air pilots, and also to consider stating an intention to study whether such a rule should in the future be applied to other unions.

10. Eligibility—Nonresident Aliens

House bill.—Title II provides for the exclusion, for purposes of the breadth-of-coverage requirements, of employees who are nonresident aliens with no United States income from the employer in question (even if they have United States income from other sources). — 169 (A–9)

Senate amendment.—Provides essentially the same rule, except that the exclusion from the breadth-of-coverage and the antidiscrimination rules is not allowed for employees who have United States income from other sources. — 368, 416 (A–9)

Staff comment.—The conferees may wish to adopt the substance of the House bill's rules as to nonresident aliens, but also exclude them for antidiscrimination purposes.

11. Predecessor Employers

House bill.—Under title II, regulations are to specify the extent to which service with a predecessor of the employer is to be counted for purposes of the eligibility requirements. — 215 (A–72)

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366 (A–72)

Senate amendment.—Essentially the same.

Staff comment.—The conferees may wish to consider providing in the statute that service with a predecessor of the employer must be counted if the successor employer continues to maintain the plan of the predecessor employer. In other circumstances, the regulations would specify the extent to which such service would be counted.

12. Multiemployer Plans

19, 212, 218 (42, A–68, A-80)

House bill.—

(1) Under title II, in the case of a multiemployer plan, service with any employer who was a member of the plan is to be counted.

(2) Under title I and title II the term "multiemployer plan" means a plan maintained pursuant to a collective bargaining agreement, to which more than one employer is required to contribute, and to which no one employer makes as much as 50 percent of the contributions (with other factors to be prescribed in regulations).

(3) Under title I and title II if a plan meets this 50-percent limit and qualifies as a multiemployer plan, then the plan does not become disqualified on account of excess contributions from one employer, until a year for which one employer makes more than 75 percent of the contributions.

441, 626 (A–68, A–80)

Senate amendment.—

(1) Essentially the same.

(2) Essentially the same, except that (a) for certain purposes under the amendment, a multiemployer plan[1] is required to provide that plan benefits are payable to each participant even though his employer ceases to make contributions under the plan, and (b) the amendment does not include specific authority to add other requirements by regulations.

(3) The Senate amendment does not include the 75-percent rule.

Staff comment.—

(1) The conferees may wish to consider agreeing to the rules of the House bill, but adding the requirements of the Senate amendment (point (2) (a)) that benefits must be payable to a participant in a multiemployer plan even though his employer ceases to make contributions under the plan.

(2) The conferees may also wish to consider a statement in the conference report, as guidelines for the regulations, that a plan would not be a multiemployer plan unless it is a collectively bargained plan to which a substantial number of unaffiliated employers are required to contribute and which covers a substantial

[1] The definition of this term in the Senate amendment is contained in the insurance provisions.

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portion of the industry in terms of employees or a substantial number of employees in the industry in a particular geographic area.

13. H.R. 10 Plans

House bill.—The provisions of present law, which allow a 3-year service requirement for participation, and require 100 percent immediate vesting, would continue to govern H.R. 10 plans. 242 (A–114)

Senate amendment.—The rule is the same.

Staff comment.—The conferees may wish to adopt the language of the House bill.

14. Affiliated Employers

House bill.— 215 (A–73)

(1) Title II provides that in applying the breadth-of-coverage and antidiscrimination rules (as well as the vesting rules and the limitations on contributions and benefits), employees of all corporations who are members of a "controlled group of corporations" (within the meaning of sec. 1563(a) of the Internal Revenue Code of 1954) are to be treated as if they were employees of the same corporation.

(2) A comparable rule is provided in the case of partnerships and proprietorships which are under common control (as determined under regulations).

Senate amendment.—Essentially the same, except that the rule in the amendment to cover the case of partnerships and proprietorships applies only to the limitations on contributions and benefits. 368, 606, 612 (A–73)

Staff comment.—The conferees may wish to adopt the rules of the House bill.

15. Regulations

House bill.—Title I and II rules are the same. The bill provides that regulations of the Labor Department and the Treasury Department with respect to the participation, vesting, and funding requirements of the bill (other than regulations to enforce the antidiscrimination requirements of section 401(a)(4) of the Internal Revenue Code) are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of the cooperating department (i.e., the Secretary of the Treasury or the Secretary of Labor, respectively). 16, 154, 221 (35, 377, A–85)

Senate amendment.—The Senate amendment, by not specifying otherwise, has the effect of providing generally that the regulations with respect to the participation, vesting, and funding requirements of the bill are to be prescribed by the Secretary of the Treasury.

Staff comment.—This is a jurisdictional matter discussed below.

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16. Effective dates

97, 233 (216, A–99) *House bill.*—Title I and title II both contain points (1) through (4) listed below. Title II also contains points (5) and (6).

(1) The participation provisions generally are to apply to plan years beginning after the date of enactment.

(2) Delayed effective dates are to be provided for plans in existence on January 1, 1974.

(3) The general effective date for existing plans is to be plan years beginning after December 31, 1975 (unless a later date results from application of one of the rules discussed below).

(4) For collectively bargained plans, the provisions are to take effect in plans years beginning after December 31, 1976, or, if later, the expiration of the collective bargaining agreement in effect on January 1, 1974, (but no later than plan years beginning after December 31, 1980).

(5) Title II (but not title I) provides that, for plans maintained by a tax-exempt labor organization, the effective date is postponed to plan years beginning after December 31, 1976, or, if later, the first plan year following the date of the second convention of the organization held after the date of enactment. However, all plans are to be subject to these provisions not later than plan years beginning after December 31, 1980.

(6) Title II (but not title I) permits an existing plan to elect to have the new participation provisions (and the new vesting, funding, and form of benefit provisions), apply to plan years beginning after the date of enactment but before the otherwise applicable effective date.

370 (A–99) *Senate amendment.*—

(1) The Senate amendment is the same as the House bill, as to items (1) and (3).

(2) The delayed effective dates are to apply to plans in existence on the date of enactment.

(4) For collectively bargained plans, the provisions are to take effect in plan years beginning after December 31, 1974, or, if later, the expiration of the collective bargaining agreement in effect on January 1, 1974, (but not later than plan years beginning after December 31, 1980).

The Senate amendment does not include provisions comparable to items (5) and (6), above.

Staff comment.—

(1) The conferees may wish to apply the provisions generally to plan years beginning after the date of enactment, with delayed effective dates for plans in existence on the date of enactment.

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(2) In the case of a plan existing on the date of enactment, the provisions are to become effective for plan years beginning after December 31, 1976.

(3) In the case of collectively bargained plans existing on the date of enactment, some of the staff believe that the effective date should be the same as that for other plans (point (2)); others believe that the 1976 date might be postponed to plan years beginning after the date of the expiration of the collective bargaining agreement in effect on January 1, 1974, but not later than until plan years beginning after December 31, 1979.

(4) If a contract were to be opened for other than limited purposes, then it would be treated as having expired on the date that the newly negotiated provisions take effect (if that date is before the date that the contract would otherwise have expired).

(5) The conferees may wish in the case of plans maintained by tax exempt labor organizations to apply the new standards by December 31, 1979.

(6) The conferees may wish to agree to House bill item (6).

VESTING

1. Plans Subject to the Provisions, Exceptions to Coverage, Exemption for Church Plans — 73, 171, 188 (166, A–12 A–36)

House bill.—Same as under PARTICIPATION AND COVERAGE, items 1, 2, and 3, above (except that title II of the House bill has a vesting provision corresponding to title I, item 2, point (5)).

Senate amendment.—Same as under PARTICIPATION AND COVERAGE, items 1, 2, and 3, above. — 371, 388, 419 (166, 167, (A–12, A–78)

Staff comment.—The staff comments appear in PARTICIPATION AND COVERAGE, items 1, 2, and 3, and under JURISDICTION below.

2. General Rule

House bill.—Title I and title II rules are the same. — 76, 171 (174, A–12)

(1) Plans must provide full and immediate vesting in benefits derived from employee contributions.

(2) With respect to benefits derived from employer contributions, plans must meet one of three minimum standards:

(a) graded vesting, under which the participant must be at least 25 percent vested after 5 years of credited service, plus 5 percent a year for each of the next 5 years of service, and 10 percent a year for each year of service thereafter, reaching 100 percent vesting after 15 years of service;

(b) fully vested after 10 years of service; or

(c) a "rule of 45" under which an employee with 5 or more years of covered service must be

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at least 50 percent vested when the sum of his age and years of covered service total 45, with 10 percent additional vesting for each year of service thereafter.

371, 373 (174, A-12) *Senate amendment.*—(1) Plans must provide full and immediate vesting in benefits derived from employee contributions.

(2) With respect to benefits from employer contributions:

(a) the graded vesting standard is the same (except that the plan could require that 3 of the first 5 years of service must be consecutive).

(b) The 10-year-100-percent vesting alternative is available only for plans which use this standard on the date of enactment.

(c) The "rule of 45" is not available as an alternative.

Staff comment.—The conferees may wish to consider agreeing to the rules of the House bill, except for the "rule of 45." Some would suggest having the rule of 45, as an additional option, while others would suggest that two options are sufficient.*

3. Transition Rule

78, 173 (178, A-14) *House bill.*—Title I and title II rules are the same.

(1) For plans in effect on December 31, 1973, there is a reduced vesting requirement during a transition period. During the first year to which the bill's vesting standards apply, the plan is to provide at least 50 percent of the vesting required under the applicable regular vesting schedule. This 50 percent level is increased by 10 percent a year, so that the new rules would fully apply in the sixth year after the effective date.

Senate amendment.—The Senate amendment contains no corresponding provision.

Staff comment.—The conferees may wish to consider agreeing to the position of the Senate amendment.

4. Service Credited for Vesting Purposes

79, 174 (180, A-16) *House bill.*—Title I and title II rules are the same, except that item (2)(c) appears only in title II.

(1) Generally, once an employee becomes eligible to participate in a pension plan, all his years of service with an employer (including preparticipation service, and service performed before the effective date of the Act) are to be taken into account for purposes of determining his place on the vesting schedule.

(2) However, the plan may ignore

(a) periods for which the employee declined to make mandatory contributions;

(b) periods for which the employer did not maintain the plan;

*There was not full staff agreement on this point. Some would suggest that if there are to be only two options, the rule of 45 is preferable to 10-year 100-percent vesting.

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(c) service before age 25 (under title II, but not under title I);

(d) seasonal or part-time service that is not taken into account under the "year of service" rules;

(e) service broken by periods of suspension of employment to the extent allowed under the rules on breaks in service (discussed above) under PARTICIPATION, (item 8, above);

(f) service before January 1, 1969, unless the employee has at least 5 years of service after December 31, 1968.

Senate amendment.— 372, 374 (180, A–16)

(1) Same as House bill.

(2) (a) no corresponding provision;

(b) same as House bill;

(c) service more than 5 years before participation may be ignored unless the employee made contributions under the plan or the employer made contributions on behalf of the employee;

(d) similar to House rule;

(e) similar to House rule;

(f) preenactment service, as such, may not be ignored.

Staff comment.—

(1) The conferees may wish to consider agreeing to the basic House rule.

(2) The conferees may also wish to consider agreeing to the following rules:

(a) House rule permiting an exclusion where mandatory contributions were not made;

(b) House rule permitting an exclusion for periods that the plan was not maintained;

(c) modification of House title II rule, to permit an exclusion for service performed before age 22;

(d) permitting exclusion of seasonal or part-time service not taken into account under "year of service" rules;

(e) permitting exclusion of service broken by periods of suspension of employment, to the extent allowed under "breaks in service" rules; and

(f) modification of House rule, to permit exclusion of service before January 1, 1971, unless the employee has at least 3 years of service after December 31, 1970.

5. Year of Service Defined

House bill.—Title I and title II rules are the same. 90, 97, 175, 181 (204, 214, A–17 A–26)

(1) For purposes of determining an employee's place on the vesting schedule, the term "year of service" has the same meaning it has under the participation requirements. (See above, PARTICIPATION, items 6, 7, and 8.)

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	(2) For purposes of determining the employee's accrued benefit, a plan may use any reasonable definition of year of service that is consistently applied, so long as the plan meets the antidiscrimination requirements of the law.
372 (214, A–17)	*Senate amendment.*—"Year of service" is to be defined under regulations prescribed by the Secretary of Treasury (after consultation with the Department of Labor) for years ending before January 1, 1982. Thereafter, "year of service" is to be defined as any year where the employee has more than 5 months of service with at least 80 hours of work each month.
	Staff comment.—The staff comment on this issue appears above under PARTICIPATION, item 6.
	6. Benefits Accrued in the Past
79, 174 (180, A–16)	*House bill.*—Generally, the vesting requirements of the bill are to apply to all accrued benefits, including those which accrued before the effective date of the provision. (See, however, item 4 (point (2)(f)), above, relating to pre-1969 service in the case of employees who subsequently left employment.)
374 (180, A–16)	*Senate amendment.*—The rule is the same (except as to the pre-1969 service rule).
	Staff comment.—The conferees may wish to clarify whether a plan should be required to accrue benefits for service prior to the effective date, even though it had no accrual formula for this period.
	7. Predecessor Employers
215 (A–72)	*House bill.*—Title II provides that service with the predecessor of the employer can be counted for purposes of the vesting schedule, to the extent provided in regulations.
372, 373, 375 (A–72)	*Senate amendment.*—The rules are essentially the same.
	Staff comment.—See PARTICIPATION, item 11.
	8. Multiemployer Plans
19, 213, 218 (42, A–69, A–80)	*House bill.*—Title II provides that in the case of a qualified multiemployer plan, the vesting requirements of the bill are to be applied as if all employers who are parties to the plan are a single employer.
441, 627 (42, A–69, A–80)	*Senate amendment.*—The rules are essentially the same.
	Staff comment.—While the House and Senate rules are essentially the same, the House rule may be preferred from a technical standpoint.
	9. Permitted Forfeitures of Vested Rights
12, 173 (21, A–15)	*House bill.*—Title I and title II rules are the same, except with respect to items (2) and (3).
	(1) Plans are permitted to provide that nonforfeitable benefits attributable to employer contributions nevertheless may be forfeited, but only in the event of

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the employee's death (unless a "joint and survivor" annuity is to be provided).	
(2) An employee's rights to benefits derived from employer contributions may not be forfeited on account of the employee withdrawing his mandatory contributions. (Title I forbids forfeitures on account of withdrawals whether or not the benefits have vested; title II forbids such forfeitures only if they have vested.)	80, 241 (184, A–112)
(3) A plan is permitted to suspend payment of benefits while the participant has resumed working for the employer, or in the same industry in the case of a multiemployer plan. (Under title I, but not title II, the multiemployer plan rule is limited to employment resumed before normal retirement age.)	12, 173 (21, A–15)
(4) Vested rights may be "cashed out" in a lump-sum distribution if the value of the nonforfeitable benefit is less than $1,750, or if the employee consents.	80, 176 (181, A–19)
(5) With the permission of the Secretary of Labor, and in order to prevent termination of the plan or a substantial curtailment of benefits, a retroactive plan amendment may provide for divestiture of otherwise vested rights.	12, 144, 173, 199 (21, 341, A–15, A–51)
Senate amendment.—Plans are permitted to provide that all nonforfeitable benefits attributable to employer contributions nevertheless may be forfeited, but only—	488 (21)
(1) In the event of the employee's death (unless a joint and survivor annuity is to be provided); or	371 (A–15)
(2) If the employee withdraws any part of his own mandatory contributions to the plan.	381 (184, A–112)
(3), (4), (5) No corresponding provisions.	
Staff comment.—	
(1) The House and Senate rules are essentially the same with respect to forfeitures in the event of death.	
(2) On the one hand, it may be argued that plans must be permitted to penalize employees who withdraw mandatory contributions, for otherwise employees would find it too easy to dissipate currently what was intended to be for their retirement years. On the other hand, it may be argued that that is not a good reason for permitting forfeiture of vested benefits, because employers who wish to prevent current dissipation of retirement funds may do so by forbidding withdrawal of employee contributions since those employee contributions, too, were originally committed for retirement income purposes. One possible resolution might be to permit forfeitures proportional to the employee's withdrawal (i.e., if the employee withdraws half of the employee's own contributions, then there could be a forfeiture of half of benefits attributable to the employer's contributions). Another alternative might be to forbid forfeitures of vested	

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benefits on account of withdrawals, but only as to benefits that have become vested after the effective date of this provision. (See also item 15 (point (2)) (*Class Year Plans*), below.)

(3) With respect to suspension of benefits when employment is resumed, the conferees may wish to consider allowing a single employer or a multiemployer plan to suspend benefits where the retired employee has resumed employment with that employer (or, in the case of a multiemployer plan, the retiree has resumed employment in the industry) before age 65. However, where employment is resumed after age 65, the conferees may wish to consider forbidding a suspension of benefits, except where the employee agrees to the suspension, participates in the employer's plan, and accrues additional benefits under the plan.

(4) The conferees may wish to consider modifying the rule of the House bill with respect to cashing out vested rights. The involuntary cashing out (i.e., without the employee's consent) might be permitted under regulations, where the present value of the benefits was so small that the plan should be permitted to avoid the administrative costs involved in preserving the right to deferred benefits. However, the regulations would not be permitted to authorize involuntary cashing out if the current value of the benefits exceeded $1,750. Also, the conferees might wish to make clear that such a provision should not be construed as an endorsement of the cashing out of retirement benefits. Further, the conferees may wish to consider clarifying in the legislative history that a labor union may bargain for a lower maximum cash-out provision than that which might be permitted under the regulations.

(5) The conferees may wish to agree to the position of the Senate amendment and not allow retroactive decreases in vested rights.

10. Accrued Benefit

14, 18, 86, 175, 178 (26, 39, 197, A–18, A–22)

House bill.—Title I and title II rules are the same.

(1) The term "accrued benefit" refers to pension or retirement benefits and does not apply to certain ancillary benefits, such as medical or life insurance.

(2) In the case of a retirement plan other than a defined benefit plan, the accrued benefit is to be the balance in the employee's plan account.

(3) In the case of a defined benefit plan, the accrued benefit is to be determined under the plan, subject to certain requirements. Normal retirement age is generally to be the age specified in the plan, but not later than age 65, or the tenth anniversary of the time the participant commenced participation.

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(4) Each defined benefit plan is to be required to satisfy one of the following two accrued benefit tests:

(a) the accrual rate for any year for each participant is no more than 133⅓ percent of that participant's accrual rate for any other year, however, greater accrual rates are permitted for the first 10 years of participation; this alternative may be used only by plans which continue to accrue benefits during participation, at least until early retirement); or

(b) for any year each participant accrues not less than 3 percent of the maximum benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served until age 65 (or the earlier normal retirement date under the plan).

These rules are to be applied without regard to subsidized early retirement benefits and without regard to social security supplements.

(5) In the case of a defined benefit plan funded through an insurance contract, the accrued benefit is to be the annuity which might be purchased by the cash surrender value of the policy.

(6) Notwithstanding the above rules, the Internal Revenue Service is directed to take account of the rates of accruals, as well as vesting schedules in determining whether there is a prohibited discrimination.

Senate amendment.—(1) The term "accrued benefit" refers to the pension or retirement benefits and does not apply to certain ancillary benefits, such as medical or life insurance. 374, 498 (26, 197, A–18, A–22)

(2) In the case of any retirement plan other than a defined benefit pension plan, the employee's accrued benefit is the balance in his plan account.

(3) In the case of a defined benefit pension plan, the minimum accrued benefit is to be a fraction of the amount the employee would receive at normal retirement age, under the plan as in effect at the time for which the accrued benefit is to be determined. Normal retirement age is to be defined by regulations and would generally be that age between 55 and 65 at which the retirement benefit has the greatest actuarial value.

(4) For purposes of determining the accrued benefit, the retirement benefit is to be computed as though the employee continued to earn the same rate of compensation annually that he had earned during the years which would have been taken into account under the plan, had the employee retired on the date in question. This amount is then to be multiplied by a fraction, the numerator of which is the employee's total years of active participation in the plan up to the date when the computation is being made and the denominator of which is the total number of years of active partici-

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pation he would have had if he continued his employment until normal retirement age. For purposes of this calculation, ancillary benefits, such as medical insurance or life insurance, would not be considered, but the value of the right to receive early retirement benefits or social security supplements would be taken into account.

(5) In the case of a defined benefit pension plan funded through an insurance contract, the accrued benefit is to be the annuity which might be purchased by the cash surrender value of the policy.

Staff comment.—The conferees may wish to consider agreeing to a combination of the House bill and Senate amendment rules in this area.

(1) The House and Senate rules are the same in excluding ancillary benefits, such as medical or life insurance from the definition of accrued benefits.

(2) The House and Senate rules are the same in the case of a retirement plan other than a defined benefit plan.

(3) The conferees may wish to consider adopting the House rule with respect to the definition of normal retirement age.

(4) The conferees may wish to require each plan to satisfy any of the following three accrued benefit tests:

(a) the 133⅓ percent rule (with no prohibition on front loading);

(b) the 3-percent rule on a cumulative basis (which permits front loading); or

(c) the Senate rule, modified to use the House definition of "normal retirement age," and applied only to the benefit payable at or after normal retirement age (i.e., it would not take account of subsidized early retirement and social security supplements).

(d) None of the above would require an accrual with respect to the first year of participation. This is provided by agreeing to a rule that, for purposes of benefit accrual, a plan could require two continuous years of service, with at least 1,000 hours of service in each of those years.*

(5) The House and Senate rules are essentially the same with respect to a defined benefit plan funded through an insurance contract.

(6) The conferees may wish to consider agreeing to the House rule that the Internal Revenue Service must take account of rates of accrual in applying the antidiscrimination rules.

(7) The conferees may also wish to consider clarifying that an accrued benefit may not decrease on account of increasing age or service (except for Social Security supplements or their approximate equivalents).

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*There was not full staff agreement on this point.

11. Changes in Vesting Schedule — *Page numbers*

House bill.—Title I and title II rules are the same. 81, 177

(1) If a plan changes its vesting schedule, each person who is a participant in the plan on the date the amendment is adopted (or on the amendment's effective date) must continue to vest in his accrued benefits at no less than the rate at which he would have been vested under the pre-amendment vesting schedule. (185, A-21)

(2) Also, the plan is to specify which of the statutory minimum vesting schedules it is operating under.

Senate amendment.—The Senate amendment contains no comparable provision.

Staff comment.—

(1) The conferees may wish to consider agreeing to a rule that if a plan amendment changes the vesting schedule, any participant with at least 5 years of service can elect to stay under the preamendment vesting schedule.* (If he makes no election, he will come under the new schedule, but in on event is this to result in a forfeiture of already vested benefits.)

(2) The conferees may wish to consider agreeing to the House rule that each plan is to specify which of the statutory minimum vesting schedules it is operating under.

12. Allocation Between Employee and Employer Contributions

House bill.—Title I and title II rules are the same. 91, 181

(1) In the case of any plan other than a defined benefit pension plan, the accrued benefit derived from the employee's contributions is the amount in his own separate account. If employee and employer contributions were not accounted for separately, the employee-contributed portion of the total accrued benefit would be treated as the fraction of the total which is the ratio of the employee's contributions to total contributions (after taking account of withdrawals). (205, A-27)

(2) In the case of a defined benefit pension plan which provides an annual benefit in the form of a single life annuity commencing at normal retirement age (without ancillary benefits), the accrued benefit derived from mandatory employee contributions [2] (which could never be in excess of his total accrued benefit under the plan) would be treated as the total amount of the employee's "accumulated contributions" multiplied by the conversion factor (see point (4)).

(3) In determining the employee's accumulated contributions, interest on the employee's mandatory contributions is to be compounded annually, initially at a rate of 5 percent (beginning with the first plan year subject to the vesting requirement imposed under the

*There was not full staff agreement on this point.

[2] Voluntary employee contributions are to be treated the same as a separate account.

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retirement age. In addition, any interest accumulated on the employee's contributions in accordance with the plan prior to the date when the vesting provisions of the bill first applied to that plan, is to be treated as part of the employee's accumulated contributions.

(4) The conversion factor (the value, at age 65, of the right to receive $1 per year for life) and the rate of interest on employee contributions are to be adjusted prospectively under regulations from time to time, as may be appropriate.

(5) Where a defined benefit plan provides a benefit other than an annual benefit in the form of a single life annuity commencing at normal retirement age (without ancillary benefits), or if the employee's mandatory contributions are applied toward some other form of benefit, the accrued benefit, or amount of accrued benefit derived from employee contributions, is to be the actuarial equivalent of the single life annuity (without ancillary benefits) as determined under regulations.

377 (205, A–27) *Senate amendment.*—The Senate rule is essentially the same.

Staff comment.—The conferees may wish to consider agreeing to the rules, as outlined above; and, in addition, agreeing to provide, as to defined benefit plans, that the accrued benefit derived from the employee's contributions could never be less than the value of his own contributions (without interest).

13. Discrimination

80, 185 (182, A–32) *House bill.*—Title I contains point (1); title II contains points (2) and (3).

(1) Title I provides that the vesting requirements of title I are not to be construed to prohibit plan provisions adopted pursuant to Treasury regulations to prevent discrimination.

(2) Title II provides that the Internal Revenue Service is to require more rapid vesting than that required under the minimum schedules, if (a) there has been a pattern of abuse under the plan (such as firing of employees before their accrued benefits vest), or (b) it appears that there have been, or are likely to be, forfeitures or accruals of benefits under the plan which have the effect of discriminating in favor of officers, shareholders, or highly-paid employees.

(3) Title II also contains a provision to make clear that the vesting requirements under the bill are not intended to operate to overturn rules which provide that, in the event of plan termination, the benefits under the plan are not provided in a manner that discriminates in favor of officers, shareholders, or highly-compensated employees.

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Senate amendment.—

(1) The amendment specifically provides that compliance with the minimum vesting schedules does not automatically constitute compliance with the antidiscrimination requirements. 380, 382 (A–32)

(2) The amendment also contains a provision, similar to that of point (3) in the House bill, concerning early plan termination.

Staff comment.—The conferees may wish to consider agreeing to the rules of the House bill. In addition, the conferees may wish to consider agreeing to point (1) of the Senate amendment.

14. Plan Termination

House bill.—Title I provides point (2); title II provides all 3 points. 61, 186, 223 (131, A–33, A–88)

(1) Under present law, all accrued benefits in a qualified pension plan must become fully vested (to the extent then funded) in the event of a plan termination, or the complete discontinuance of contributions under the pension plan.

(2) Under the House bill, (both title I and title II), this rule will no longer be necessary with respect to discontinued contributions to plans covered under the funding requirements of the bill, because the bill provides for an excise tax on underfunding.

(3) However, title II makes it clear that the rule of full immediate vesting is still to apply in the case of a termination, or partial termination of a plan, and in the case of the discontinuance of contributions to the plans which are not subject to the new funding requirements (*e.g.*, profit-sharing plans, church plans, and government plans).

Senate amendment.—The Senate amendment provides an essentially similar rule. 382, 385 (A–33, A–88)

Staff comment.—While the two sets of rules are essentially similar, the rules of the House bill may be preferred for technical reasons.

15. Class Year Plans

House bill.—Title I and title II rules are the same. 78, 187 (179, A–34)

(1) The minimum vesting requirements of the bill are satisfied in the case of a class year plan if the plan provides for 100 percent vesting of the benefits derived from the employer contributions within five years after the end of the plan year for which the contributions were made.

(2) No forfeitures of benefits attributable to employer contributions are to be permitted, even if the employee withdraws his own mandatory contributions to the plan.

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Senate amendment.—

380 (179, A–34) (1) Same as the rule of the House bill.

(2) The Senate amendment would permit forfeiture of benefits attributable to employer contributions, on a class-year-by-class-year basis, if the employee withdraws his own mandatory contributions.

Staff comment.—

(1) The rules are the same with respect to point (1).

(2) The conferees may wish to consider conforming their decision on this point, with the decision they reach on item 9, point (2) (*Permitted Forfeitures of Vested Rights*), above.

16 Recordkeeping Requirements

42, 189 (96, A–37) *House bill.*—Title I and title II rules are essentially the same, except that point (3) is contained only in title II.

(1) The employer is to be required to keep records of each employee's years of service and percentage of vesting, together with any additional information required by regulations in order to determine the employee's benefits.

(2) In the case of a multiemployer plan, the employer is to furnish the required information to the plan administrator.

(3) Under title II, failure to maintain or furnish the required records is to result in a civil penalty of $10 for each employee with respect to whom the failure occurs, unless it is shown that the failure is due to reasonable cause.

360, 382 (96, A–37) *Senate amendment.*—The Senate rule is essentially the same.

Staff comment.—The conferees may wish to consider agreeing to the rules as outlined above and, in addition, may wish to consider clarifying the rules as follows:

(1) The employee would be entitled to receive a statement from the plan administrator as to his accrued benefit and vesting status upon the request of the employee, but not more often than once a year.

(2) In addition, when there is an indication that the employee is terminating service under the plan, the information would be supplied automatically to the employee.

(3) Whenever there is a break in service, the information must be supplied to the employee.

(4) In addition, the conferees may wish to consider including in the committee report a statement to the effect that multiemployer plans should comply with the same rule with respect to recordkeeping and the furnishing of information as single employer plans to the extent this is practical in light of the special prob-

lems of multiemployer plans. In other words, the regulations could include additional requirements requiring multiemployer plans to meet the same requirements as single employer plans to the extent this is found to be practical.

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17. Variations

House bill.—Title I and title II rules are the same except as described in point (4) below. 144, 204, 221 (341, A–56, A–86)

(1) The Secretary of Labor may prescribe an alternative method of satisfying the vesting schedule and other requirements with respect to participation and vesting, if it is established to his satisfaction that application of the requirements of the bill would increase the cost of the plan to such an extent that there would result a substantial risk that the plan would be terminated, that there would be a substantial reduction in benefits under the plan or in the compensation of the employees, or that the regular rules of the bill would impose unreasonable administrative burdens in connection with the plan. It would also have to be found that the application of these requirements, or the discontinuance of the plan, would be adverse to the interests of the plan participants in the aggregate. In addition, it would have to be found that the alternative method is necessary or appropriate to carry out the purposes of the bill and that it provides adequate protection to the plan's participants and beneficiaries.

(2) During the period for which the alternative method is in effect, no plan amendment may be adopted which increases plan liabilities because of (a) benefit increases, (b) changes in accruals, or (c) changes in rate of vesting.

(3) The Secretary may prescribe an alternative method only after giving interested persons an opportunity for a hearing.

(4) Title II provides that the Secretary of Labor may grant a variance only in the case of a multiemployer plan, only with respect to the requirements of the vesting schedule and the minimum standards regarding accrued benefits, only if all plan participants and other interested persons have received notice, and only if the Secretary of the Treasury has been notified of the hearing.

Senate amendment.—The Senate amendment contains no comparable provision, but would permit the Secretary of Labor to postpone the otherwise applicable effective date of the vesting provisions for a period of up to 6 years, if he finds that implementation of the vesting requirements will impose "substantial economic hardship" on the plan. 386 (381, A–86)

Staff comment.—The conferees may wish to consider agreeing to the following rules in this area:

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(1) A variance would be available for plans (whether or not they are multiemployer plans) which were in existence on January 1, 1974.

(2) A variance would be available only with respect to the requirements of the vesting schedule. (Separate rules would be provided as to funding.)

(3) A variance would be available only if it were found that:

(a) application of the regular rules of the bill would increase the cost of the plan to such an extent that there would result a substantial risk that the plan would be terminated, or there would be a substantial reduction in benefits under the plan or in the compensation of the employees;

(b) that the application of the vesting schedule requirements, or discontinuance of the plan, would be adverse to the interests of plan participants in the aggregate; and that

(c) the needed results could not be obtained by waivers or extensions of time under the funding standards.

(4) No plan could receive a variance unless it is applied within 2 years after the date of enactment.

(5) The variance would be granted for an initial period of 4 years. Plans could receive one additional 4-year variance, if the additional variance was applied for at least one year before expiration of the initial variance.

(6) During the period when a variance was in effect, there could be no plan amendment which would have the effect of increasing plan liabilities because of (a) benefit increases, (b) changes in accruals, or (c) changes in rate of vesting.

18. Joint and Survivor Annuities

84, 235
(194, A–104)

House bill.—Title I and title II rules are the same.

(1) Where the plan provides for a retirement benefit in the form of an annuity, and the participant has been married for a five-year period ending on the annuity starting date, the plan must provide for a joint and survivor annuity, unless the participant elects otherwise.

(2) The survivor annuity must be not less than half of the annuity payable to the participant during the joint lives of the participant and his spouse.

(3) The survivor annuity is required to be payable if the participant has reached the earliest age which retirement is permitted under the plan (whether or not the participant has actually retired) and the participant and his spouse had been married throughout the five-year period ending on the date of the participant's death.

(4) The plan may provide that the participant has a reasonable period (as prescribed by regulations) be-

fore the annuity starting date during which he may elect in writing not to take the joint and survivor annuity. *Page numbers*

(5) The plan may provide that such an election, or any revocation of such an election, would not become effective if the participant dies within some period of time (not in excess of 2 years) of such election or revocation.

Senate amendment.—

(1) Essentially similar to House rule, except that there is no 5-year marriage requirement.

(2) Essentially similar to House rule.

(3) No corresponding provision.

(4) The participant may elect in writing, within 2 years of normal retirement age (or, if earlier, first payment of regular retirement benefits) not to have the benefit paid in the form of a joint survivor annuity.

(5) No corresponding provision.

Staff comment.—

(1) The conferees may wish to consider agreeing to point (1) of the House bill except that the 5-year marriage requirement might be reduced to a one-year requirement.

(2), (4), (5) The conferees may wish to consider agreeing to the rules of the House bill as to points (2), (4), and (5).

(3) The House bill may be regarded as requiring a preretirement death benefit beyond the appropriate scope of the bill. On the other hand, the Senate amendment may be regarded as discriminating against the spouse of the participant who remains in the plan after early retirement age, in effect, establishing a governmental policy of favoring early retirement. If the conferees prefer the House approach, they may wish to permit participants to make one choice as to preretirement (e.g., electing out, if the employer provides generous preretirement life insurance) and another choice as to postretirement annuities.

19. Alienation

House bill.—Title I and title II rules are the same. Generally, the plan must provide that benefits may not be assigned or alienated. However, a plan will be permitted to provide for a voluntary revocable assignment (not to exceed 10 percent of any benefit payment) and vested benefits may be used as collateral for reasonable loans from the plans where fiduciary requirements of the law are not violated. 59, 239 (127, A–109)

Senate amendment.—An employee's accrued benefits, once vested, cannot be assigned or alienated. 417 (127, A–109)

Staff comment.—The conferees may wish to consider agreeing to the House rule, except that no alienation would be permitted until the benefit is in pay status; thereafter the 10-percent rule would apply.

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The conferees also may wish to consider providing that any such alienation is not to be made for the purpose of defraying plan administration costs.

20. Social Security Benefits of Terminated Participants

83, 240
(192, A–111)

House bill.—Title I and title II rules are the same.

(1) The provisions codify current administration practice which provides that qualified plans may not use increases in social security benefit levels to reduce employee plan benefits that are already in pay status.

(2) A similar protection is also extended against reductions in plan benefits where social security benefit levels are increased, where the individuals concerned are separated from service prior to retirement and have vested rights to deferred benefits.

Senate amendment.—The Senate amendment contains no comparable provisions.

Staff comment.—The conferees may wish to consider agreeing to the rules of the House bill.

21. Payment of Benefits

82, 239
(191, A–110)

House bill.—Title I contains point (1) below. Title II contains point (2).

(1) Title I provides that in the case of a participant who has terminated his service under the plan payment of benefits must begin at the earlier of the following dates:

(a) the date when a non-terminated participant with the same amount of credited service could have exercised any unrestricted option under the plan to receive regular retirement benefits; or

(b) age 65.

(2) Title II requires that a qualified plan is generally required to commence benefit payments (unless the participant otherwise elects) not later than the sixtieth day after the close of the plan year in which the latest of the following events occurs:

(a) the participant attains age 65;

(b) ten years have elapsed from the time the participant commenced participation in the plan; or

(c) the participant terminates his service with his employer.

489
(A–110)

Senate amendment.—A plan is required to begin the payment of benefits within 30 days after the participant attains age 65 or completes ten years of participation in the plan (which occurs later).

Staff comment.—The conferees may wish to consider agreeing to the rules of title II of the House bill with a clarification that if the normal retirement age under the plan is less than age 65, then the normal retirement age will be substituted for the requirement of point (2) (a) above.

22. Comparability of Plans Having Different Vesting Provisions Under the Antidiscrimination Rules — Page numbers

House bill.—Title II provides that highly mobile employees, such as engineers, are permitted to trade off high benefits which might be available under one retirement plan of their employer for their right to participate in another plan with lower benefits, but more rapid vesting. — 190 (A–39)

Senate amendment.—The Senate provision is the same. — 384 (A–39)

Staff comment.—No difference in provisions.

23. Protection of Pension Rights Under Government Contracts

House bill.—Title II provides the following rules. — 251 (A–128)

(1) The Secretary of Labor is directed to undertake a study of steps which could be taken to ensure that professional, scientific, technical, and other personnel employed under Federal contracts are protected against loss of their pensions resulting from job transfers or loss of employment.

(2) The Secretary of Labor is to report to Congress on this subject within two years after the date of enactment and shall, if feasible, develop recommendations for Federal procurement regulations to safeguard pension rights in the situation within one year after filing his report.

(3) These regulations are to become effective unless either House of Congress adopts a resolution of disapproval within 90 days after the proposed regulations are submitted to the Congress, by the Secretary of Labor. Any such disapproval is to be referred to the Labor Committee of the relevant House.

Senate amendment.—

(1) The Senate provision is generally similar in requiring a study of this situation. — 422 (A–128)

(2) However, the Senate provision does not provide for a report to Congress, but would require the Secretary of Labor to publish recommendations for protective regulations, which are to be published in the *Federal Register* within 6 months after enactment.

(3) These regulations are to be adopted by each Federal department and agency, unless the head of such department or agency has substantial grounds for disapproving the regulations in the case of his department.

Staff comment.—The conferees may wish to consider agreeing to the rules of the House bill with point (3) modified as follows:

(a) allow each House of Congress 120 days, instead of 90 days to adopt disapproval resolution;

(b) refer such resolutions to both the Labor committees and the Tax committees, with each committee having jurisdiction to report to the relevant House.

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	24. Union-Sponsored Plans
74, 188 (168, A–36)	*House bill.*—Title I and title II rules are the same. Union-sponsored plans which do not, at any time after enactment, provide for employer contributions are exempted from the vesting requirements of the bill.
	Senate amendment.—The amendment contains no comparable provision.
	Staff comment.—The conferees may wish to consider agreeing to the rule of the House bill.
	25. Excise Tax on Failure To Provide Vesting
405 (A–40)	*House bill.*—Title I and title II make no provision for an excise tax on failure to provide vesting.
	Senate amendment.—(1) The Senate amendment provides for the imposition of an excise tax on the employer in cases where the employer is not complying with the vesting provisions in practice, even though the plan contains a vesting schedule which is consistent with the requirements of the bill.
	(2) Initially, the tax would equal 5 percent of the accumulated vesting deficiencies.
	(3) However, this tax could go to 100 percent of the amount of the deficiencies if the offense were not corrected.
	Staff comment.—The conferees may wish to consider agreeing to the approach of the House bill.
	26. Effective Dates
97, 233 (216, A–99)	*House bill.*—Title I and title II both provide the same effective date for the vesting provisions as is provided for requirements with repect to participation and coverage.
386 (216, A–100)	*Senate amendment.*—(1) The provisions generally are to apply to plan years beginning after the date of enactment.
	(2) However, in the case of a plan already in existence on the date of enactment, the provisions will take effect for plan years beginning after December 31, 1975.
	(3) Where a plan is subject to a collective bargaining agreement, if the Secretary of Labor should find that implementation of the vesting requirement would impose substantial economic hardship on the plan, he may require that the effective date be postponed for a period of up to six years.
	(4) The provisions apply to government plans and plan years beginning after December 31, 1980.
	Staff comment.—(1) Generally, the staff comments in this area appear under PARTICIPATION AND COVERAGE, *Effective dates*, above.
	(2) If the conferees decide that government plans will not be covered under the participation and vest-

ing requirements, there will, of course, be no need for a delayed effective date with respect to such plans.

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FUNDING

1. Plans Subject to the Provisions

House bill.— 98, 191 (219, A–42)

(1) Under title I the new minimum funding rules are to be administered by the Secretary of Labor. The funding rules of title I apply to plans established or maintained by employer or employee organizations engaged in or affecting interstate commerce.

(2) Under title II, the new minimum funding rules also are to be administered by the Secretary of the Treasury. The funding rules of title II are to apply to pension, annuity, and bond purchase plans that are qualified or were determined by the Internal Revenue Service to be qualified.

Senate amendment.—The new funding rules are to be administered only by the Secretary of the Treasury and are to apply to pension and annuity plans which are qualified or which were determined by the Internal Revenue Service to be qualified. In addition, the Senate amendment generally prohibits a person engaged in a business that affects interstate commerce from having a nonqualified plan. 390, 419 (219, A–42)

Staff comment.—This is a jurisdictional matter discussed below.

2. Exceptions to Coverage

House bill.—Title I of the House bill exempts the following plans from the new funding rules: 99, 112 (220)

(1) Governmental plans, including plans financed by contributions required under the Railroad Retirement Act.

(2) Church plans which do not elect coverage.

(3) Non-U.S. plans primarily for nonresident aliens.

(4) Unfunded plans maintained by the employer primarily to provide deferred compensation for select management or highly-compensated employees.

(5) Plans which have not provided for employer contributions after the date of enactment.

(6) Profit-sharing, savings, or other individual account plans.

(7) Plans funded exclusively by the purchase of individual qualified insurance contracts.

(8) Supplementary plans.

(9) Plans exclusively for a sole proprietor or exclusively for partners, all of whom own more than 10 percent of the capital or profits interest in the partnership.

(10) Plans established by fraternal societies or other organizations described in section 501(c)(8) or (9) of the Internal Revenue Code.

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204 (A–59)

Title II of the House bill exempts the following plans from the new funding rules:

(1) Government plans (including Railroad Retirement Act plans) are excluded if they meet the requirements of present law.

(2) Church plans are excluded if they meet the requirements of present law.

(3) Non-U.S. plans primarily for nonresident aliens are excluded only to the extent they are nonqualified plans.

(4) Unfunded plans generally are excluded as nonqualified plans.

(5) Same as title I.

(6) Profit-sharing and stock bonus plans are excluded as under title I (however, money purchase pension plans are not excluded).

(7) Same as title I.

(8) No analogous exclusion.

(9) No analogous exclusion.

(10) No analogous exclusion.

400 (220, A–57)

Senate amendment.—The Senate amendment deals with plan exclusions as follows:

(1) Excluded, no requirement that governmental plans meet present rules.

(2) Excluded, no requirement that church plans meet present rules, no option to elect to come under new rules, no special requirements as to unrelated businesses or multiemployer plans.

(3) Excluded if the fund for the plan is maintained outside the United States.

(4) Exclusion for nonqualified plans which either require benefits to be paid in full within 5 years after the benefits accrue or which provide benefits only for corporate officers or for persons who own at least 5 percent of the stock of the corporate employer.

(5) No analogous exclusion.

(6) No exclusion as such, but payment of required contributions to defined contribution plans satisfies new funding rules.

(7) No exclusion as such, but payment of premiums satisfies new funding rules.

(8) No analogous exclusion.

(9) No analogous exclusion.

(10) Excluded, but only if no employer contributions.

Staff comment.—

(1) The conferees may wish to adopt the rules of title II of the House bill with respect to governmental plans. The conferees may also wish to adopt the rules

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of title I of the House bill with respect to the exclusion of railroad retirement plans.

(2) The conferees may wish to adopt the rules of title II of the House bill with respect to church plans.

(3) The conferees may wish to adopt the rule of title I of the House bill excluding non-U.S. plans for nonresident aliens, but additionally require that to be excluded substantially all of the participants and beneficiaries of a plan must be nonresident aliens.

(4) The conferees may wish to adopt the rules of title I of the House bill. Additionally, in the conference report it may be appropriate to specifically indicate that the funding rules do not cover "consulting contracts" for retired management employees and do not cover plans adopted by a partnership exclusively for the benefit of a partner pursuant to section 736 of the Internal Revenue Code.

(5) The conferees may wish to adopt the rules of titles I and II of the House bill.

(6) The conferees may wish to adopt the rules of title II of the House bill.

(7) The conferees may wish to adopt the rules of titles I and II of the House bill. In addition, the conferees may wish to provide that group insurance contracts which have the same characteristics, as determined by regulation, as qualified individual insurance contracts are to be excluded from the minimum funding rules.

(8) The conferees may wish to exclude unfunded plans which provide benefits in excess of the limitations on contributions and benefits which may be adopted in the Internal Revenue Code, and which are plans for the highly-paid.

(9) The conferees may wish to adopt the rule of title I of the House bill for plans which are not tax-qualified.

(10) The conferees may wish to adopt the rule of the Senate bill; in addition, the conferees may wish to provide an exclusion for plans established and maintained by an organization described in section 501 (c) (18) of the Internal Revenue Code.

3. Normal Cost

House bill.—Title I and title II rules are the same. 102, 192
Normal costs are to be contributed currently. (225, A–43)
Senate amendment.—Same as the House bill. 391
Staff comment.—No difference in provisions. (225, A–43)

4. Existing Past Service Liabilities

House bill.—Title I and title II rules are the same. 102, 192
For plans in existence on January 1, 1974, past service liabilities as of the applicable effective date of the (225, A–43)

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	new funding rules are to be amortized over no more than 40 years on a level payment basis (principal plus interest).
391, 397 (225, A–43)	*Senate amendment.*—Past service liabilities are to be amortized over no more than 30 years (40 years for multiemployer plans).
	Staff comment.—The conferees may wish to adopt the rule of the House bill.
	5. Newly-established Initial Past Service Liabilities
102, 193 (225, A–44)	*House bill.*—Title I and title II rules are the same. (1) Initial past service liabilities of new plans are to be amortized over no more than 30 years (40 years for multiemployer plans).
391, 397 (225, A–43)	*Senate amendment.*—Same as the House bill.
	Staff comment.—No difference in provisions.
	6. Past Service Liabilities from Plan Amendments
102, 103, 193, 194 (224, 228, A–44, A–45)	*House bill.*—Title I and title II are the same. (1) Changes in past service liabilities from plan amendments that increase or decrease past service costs are to be amortized over no more than 30 years (40 years for multiemployer plans).
391 (225, 226, 228, 229, A–44, A–46)	*Senate amendment.*— (1) Same as the House bill for plan amendments that increase or decrease unfunded past service liabilities by 5 percent or more. (2) If the change in past service liabilities is less than 5 percent, amortization is to be over no more than 15 years (or the average remaining service life of participants if shorter).
	Staff comment.—The conferees may wish to adopt the rule of the House bill.
	7. Experience Gains and Losses
102, 104, 193 195 226, 228, A–44, A–45)	*House bill.*—Title I and title II rules are the same. (1) Experience gains and losses are to be amortized over no more than 15 years (20 years for multiemployer plans).
392, 393 (226, 228, A–44, A–45)	*Senate amendment.*—Amoritization is to be over no more than 15 years (or the average remaining service life of participants, if shorter).
	Staff comment.—The conferees may wish to adopt the House bill rules.
	8. Additional Funding Standard
103, 193 (226, A–44)	*House bill.*—Title I and title II rules are the same. (1) The additional standard is to be used only if it requires a larger contribution than the basic funding standard.
	(2) The additional standard requires a contribution of the first year's payment under a 20-year amortization schedule of unfunded vested liabilities. A new determination with respect to the applicability of this

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funding standard (and a new calculation of the amortization schedule) is to be made in each year.	
Senate amendment.—No comparable provision.	
Staff comment.—The conferees may wish to follow the Senate bill and not include this additional funding standard.	
9. Combining and Offsetting Amounts	
House bill.—Title I and title II are the same.	104, 195
(1) The various funding amortization schedules may be combined and offset to reduce the number of accounts that must be maintained.	(230, A–47)
Senate amendment.—No comparable provision.	
Staff comment.—The conferees may wish to adopt the rules of the House bill.	
10. Determination of Costs	
House bill.—Title I and title II rules are the same.	104, 196
(1) For purposes of the minimum funding rules, normal costs, etc., are to be determined under the funding method used to determine costs under the plan.	(232, A–48)
Senate amendment.—Same as the House bill.	394
Staff comment.—No difference in provisions.	(232, A–48)
11. Valuation of Assets	
House bill.—Title I and Title II rules are the same.	105, 196
(1) Generally, assets may be valued under any reasonable actuarial method of valuation that takes into account fair market value and is permitted under regulations.	(233, 234, A–48)
(2) Also, an election is available to value certain debt assets on an amortized basis.	
Senate amendment.—Asset valuation is to be based on average values for five (or fewer) years.	396 (239, A–48)
Staff comment.—The Conferees may wish to adopt the rules of the House bill.	
12. Reasonable Actuarial Assumptions	
House bill.—Title I provides:	27, 105, 197
(1) Actuarial assumptions are to be reasonably related to plan experience and reasonable expectations.	(235, A–49)
(2) Actuarial assumptions are, in combination, to offer the plan actuary's single best estimate of anticipated plan experience.	
Title II provides that actuarial assumptions are, in the aggregate, to be reasonable.	
Senate amendment.—Substantially the same as title II of the House bill.	394, 396 (235, A–49)
Staff comment.—	
The conferees may wish to adopt a combination of the rules of title I and title II of the House bill and the rules of the Senate amendment, providing that:	
(1) Actuarial assumptions in the aggregate are to be reasonable, taking into account the experience of the plan and expectations.	

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(2) Actuarial assumptions are to represent the actuary's best estimate of anticipated experience under the plan.

13. Change in Funding Method or Plan Year

House bill.—Title I and title II rules are the same.

105, 198 (236, A–50)

(1) A change in funding method or plan year requires the prior approval of the administering Secretary.

Senate amendment.—Same as the House bill.

396 (236, A–50)

Staff comment.—No difference in provisions.

14. Definition of Experience Gain or Loss

House bill.—Title I provides:

106, 197 (237, A–49)

(1) An experience gain or loss occurs when plan experience deviates from projected assumptions sufficiently to require a change in assumptions.

(2) The amount of the gain or loss is the increase or decrease in accrued unfunded liabilties attributable to this change in assumptions.

Under title II, it is expected that experience gain or loss will be treated as the difference between the anticipated experience of the plan and the actual plan experience.

Senate amendment.—Same as title II of the House bill.

396 (235, A–49)

Staff comment.—The conferees may wish to adopt the approach of title II of the House bill and of the Senate bill.

15. Certain Changes as Experience Gain or Loss

House bill.—Title I and title II rules are the same.

106, 197 (237, A–49)

Experience gain or loss occurs with changes of plan liabilities resulting from:

(1) a change in social security or other government retirement benefits;

(2) a change in the definition of "wages" under sec. 3121 of the Internal Revenue Code; or

(3) a change in the amount of wages taken into account for purposes of plan integration with social security.

Senate amendment.—The Senate amendment deals as follows with the above-described rules:

396 (235, A–49)

(1) Same as House bill.

(2) Same as House bill.

(3) No comparable provision.

(4) The Senate amendment also includes changes in liabilities from changes in the funding method or the actuarial assumption used.

Staff comment.—

(1), (2), (3) The conferees may wish to adopt the rules of the House bill.

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(4) In addition, the conferees may wish to make clear that changes in plan liabilities resulting from changes in actuarial assumptions are to be amortized over a 30-year period.

Also, the conferees may wish to make clear that if experience losses occur, they will not be eliminated for purposes of amortization under the minimum funding schedule on account of consequent later changes in actuarial assumptions. For this purpose it is suggested that assets be valued at their fair market value.*

16. Three-year Determination of Gains and Losses

House bill.—Title I and title II rules are the same. 107, 201

Experience gains and losses are to be determined, and plan liabilities are to be valued, at least every three years and more frequently in particular cases, as required by regulations. (239, A–53)

Senate amendment.—An annual determination of gains and losses and an annual valuation of liabilities is required. 396 (239, A–53)

Staff comment.—The conferees may wish to adopt the rules of the House bill.

17. Full Funding

House bill.—Title I and title II rules are the same. 107, 198

(1) Where a plan is fully funded, or nearly so, only the amount needed to bring the plan to full funding (where assets equal liabilities) is to be contributed. (240, A–50)

(2) For purposes of determining whether assets equal liabilities, assets are to be valued under the usual method used by the plan or at fair market value, whichever is lower.

Senate amendment.—(1) Same as the House bill. 395

(2) In determining whether assets equal liabilities, assets are valued by taking the average value of plan assets for five (or fewer) years on the valuation date. (240, A–50)

Staff comment.—The conferees may wish to adopt the rules of the House bill, if they adopt the rules of the House bill for purposes of valuing plan assets in general.

In addition, the conferees may wish to permit an alternative minimum funding standard in certain cases where the assets are sufficient to pay all the liabilities of the plan if it then terminated. *

18. Retroactive Plan Amendments Having Limited Effect

House bill.—Title I and title II rules are the same. 81, 199

(1) A plan may be amended to reduce (or increase) plan liabilities without the approval of the Secretary of Labor after the close of a plan year, but by the time required to file the employer's tax return for that (186, A–51)

* Not all staff members agree with this suggestion.

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year. For multiemployer plans, such an amendment may be made up to two years after the close of the plan year.

(2) However, such an amendment cannot reduce the accrued benefit (whether or not vested) of any participant determined as of the beginning of the plan year to which the amendment applies.

Senate amendment.—No comparable provision.

Senate amendment.—No comparable provision.

the rules of the House bill, but in addition, provide:

(1) Such retroactive amendments can be made only upon a filing with the Secretary of Labor notifying him that such an amendment has occurred.

(2) The Secretary of Labor would have the authority to approve or disapprove of the amendment. If the amendment were not approved, it would be treated as not having gone into effect.

(3) Standards for approval or disapproval would include economic hardship, the inability to acquire a timely funding waiver, etc.

(4) Additionally, a retroactive reduction in benefits would only be allowed to the extent required by the circumstances.

19. Retroactive Plan Amendments With Approval

81, 144, 200 (186, 341, A-52)

House bill.—Title I and title II both contain points (1) and (2) listed below. Title I (but not title II) also contains point (3). Title II (but not title I) contains points (4) and (5).

(1) Plans may be amended to reduce benefits retroactively with the approval of the Secretary of Labor after a public hearing.

(2) The Secretary of Labor may allow an amendment to reduce benefits on a determination that (a) the amendment is necessary or appropriate to carry out the purposes of the bill and to provide protection to participants and beneficiaries, (b) without the amendment, there would be a substantial risk that the plan would not be continued or that pension benefits or compensation would be substantially curtailed, and (c) failure to allow the amendment would be adverse to plan participants in the aggregate.

(3) Under title I, but not title II, retroactive amendments may be approved if there would otherwise be unreasonable administrative burdens for the plan.

(4) Under title II, but not title I, all participants and beneficiaries must receive adequate prior notice of any hearing regarding a retroactive plan amendment.

(5) Under title II, but not title I, amendments approved by the Secretary of Labor cannot retroactively reduce accrued benefits for purposes of the initial 5 percent excise tax on a failure to meet the minimum funding standards.

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Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to provide that no retroactive reduction of vested benefits be permitted and therefore delete this House provision.

20. Year-by-year waivers

House bill.—Title I has a general variance procedure (see item 22 below); the provision described below appears only in title II. 81, 144, 200 (341, A–54)

(1) The Secretary of the Treasury may waive the minimum funding requirements for a year in which the employer would otherwise experience substantial business hardships, but only if failure to do so would be adverse to the interests of the participants in the aggregate. Also, guidelines as to substantial business hardships are defined.

(2) This waiver is available for no more than 5 out of any 15 consecutive plan years.

(3) The amount waived is to be amortized over no more than 15 years.

Senate amendment.—Similar to title II of the House bill, with differences described below. 397 (A–54)

(1) The Senate amendment does not require that for funding to be waived this must be in the interests of the participants, nor does it set out guidelines as to substantial business hardship.

(2) Waivers are available for no more than 5 out of any 10 consecutive years.

(3) Waived amounts are to be amortized over no more than 10 years.

Staff comment.—The conferees may wish to adopt the rules of title II of the House bill.

21. Variances—Extension of Amortization Periods for Multiemployer Plans

House bill.—Title I has a general variance procedure (see item 22 below); the provision described below appears only in title II. 202 (A–55)

(1) If the Secretary of Labor finds that at least 10 percent of the employers contributing to a multiemployer plan would otherwise incur substantial business hardship, he may extend for up to 10 years (i.e. amortize over a period of up to 50 years) the amortization period for funding past service liabilities or experience losses.

(2) An extension is allowed only if the basic funding requirement would be adverse to the interests of participants in the aggregate. Guidelines are set as to what constitutes substantial business hardship.

Senate amendment.—Substantially the same as the House bill, except as indicated below. 397 (A–55)

(1) No 10-year extension is allowed for amortizing experience losses.

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(2) No factors are specified for determining substantial business hardship.

(3) There is no requirement that the basic funding requirement be adverse to interests of the participants. No guidelines are provided as to what constitutes business hardship.

Staff comment.—The conferees may wish to combine this variance and the variance described in item 22 below, in the manner described in *Staff comment* for item 22.

22. Variances—Alternative Funding Standards

144, 221 (341, A-86) *House bill.*—Title I provides as follows:

(1) The Secretary of Labor may prescribe an alternative minimum funding method for multiemployer or single employer plans.

(2) The alternative funding method may be prescribed if the Secretary determines (a) it is desirable to carry out the purposes of the Act, and (b) it provides adequate protection for participants and beneficiaries.

(3) The Secretary also must find that failure to provide an alternative would result in certain hardships, and there would be (a) a substantial risk that the plan would be discontinued, (b) substantial curtailment of pension benefit levels or employee compensation, or (c) unreasonable administrative burdens imposed on the plan. Additionally, he must find that not to provide the alternative would be adverse to the interests of participants in the aggregate.

As noted above, title II includes similar provisions, for multiemployer plans only.

414 (250, A-100) *Senate amendment.*—The Senate amendment contains no comparable provision, but would permit the Secretary of Labor to postpone the effective date of the funding provisions (for existing plans) for a period of up to 6 years, if he finds that implementation of the funding requirements would impose substantial economic hardship on the plan.

Staff comment.—The conferees may wish to combine the variances allowing an extension of amortization period (described in item 21 above) and this alternative funding standard provision, as follows:

(1) An extension of amortization periods of up to 10 years could be provided for both multiemployer and single employer plans.

(2) Additionally, the rules of title I of the House bill (points (2)–(3) above) would apply to variances.

145, 204 (349, A-56) *23. Variances—Limit on Plan Amendments*

House bill.—Title I and title II rules are the same.

If a variance is granted, then while the variance is in effect, the plan cannot be amended to increase liabilities by an increase in benefits, a change in the accrual of benefits, or a change in the rate of vesting.

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Senate amendment.—A similar limitation, with some technical differences, is included in the Senate amendment. 415, 398 (349, A–56)

Staff comment.—The conferees may wish to adopt the rules of the House bill.

The conferees may also wish to allow "de minimis" plan amendments that would increase liabilities during a period that a variance is in effect, with the prior approval of the Secretary of Labor. Additionally, the conferees may wish to provide that no such amendment can be adopted if there has been (within a limited period of time) a retroactive decrease in benefits as described in item 18 above.

24. Funding Standard Account

House bill.—The rules of title I and title II are the same. 101, 192 (244, A–43)

(1) Covered plans must maintain funding standard accounts.

Senate amendment.—Same as the House bill. 391

Staff comment.—No difference in provisions. (244, A–43)

25. Interest on Funding Standard Account

House bill.—Title I and title II rules are the same. 104, 196

The funding standard account is to be charged or credited with interest at an appropriate rate consistent with the rate or rates used under the plan to determine costs. (231, A–47)

Senate amendment.—Substantially the same as the House bill. 394 (231, A–47)

Staff comment.—The conferees may wish to adopt the rules of the House bill.

26. Enforcement (Civil Actions)

House bill.—These provisions are included only in title I. 108, 150 (245)

(1) The plan administrator is to take whatever actions are needed to bring the level of funding and benefits into conformity with each other and with the funding requirements. He may require payment of required contributions, may amend benefit schedules to reduce benefits, may suspend the accumulation of benefits or the operation of the plan, and may take any other actions needed to secure the rights of the participants.

(2) When a plan does not meet the funding requirements for five consecutive years, the administrator must reduce plan liabilities to the extent needed to conform liabilities and funding.

(3) The Secretary of Labor is to be notified when the administrator determines the funding requirements have not been met. The Secretary may require additional information and order the administrator to stay or take any of the actions described above.

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(4) Civil actions also may be brought by participants, beneficiaries, or fiduciaries and by the Secretary of Labor to enjoin any act which violates the funding standards.

Senate amendment.—No comparable provisions.

Staff comment.—This is a jurisdictional matter discussed below.

27. Enforcement (Excise Taxes)

206, 214, 215 (A–61)

House bill.—These provisions are included only in title II.

(1) a 5-percent excise tax is imposed on the amount of any funding deficiency under the plan for each plan year in which the deficiency exists.

(2) If the funding deficiency is not corrected within a specified period after notice from the Internal Revenue Service, there is to be an additional 100 percent excise tax on the accumulated funding deficiency.

(3) These taxes are not deductible and are to be paid by the employer who is responsible for contributing to the plan.

(4) Special rules are provided for determining the tax to be paid by corporations that are members of a controlled group and that have adopted a single plan, and for the payment of taxes by employers who are parties to collective bargaining agreements under which a plan is established or maintained.

405 (245, A–61)

Senate amendment.—The Senate amendment includes substantially the same provisions as the House bill, but differs as follows:

(1) No differences.

(2) The Senate amendment does not clearly provide that the 100 percent excise tax is to be paid only to the extent of an uncorrected funding deficiency.

(3) No differences.

(4) There is no provision in the Senate bill governing the excise tax to be paid by members of a controlled group of corporations.

Staff comment.—This is a jurisdictional matter discussed below.

28. Coordination of Administration—Joint Regulations

154, 221 (377, A–85)

House bill.—Title I provides that funding regulations issued by the Secretary of Labor are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of the Treasury.

Title II provides that funding regulations issued by the Secretary of the Treasury generally are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of Labor.

Senate amendment.—No comparable provisions are included, since only the Secretary of the Treasury administers the funding provisions under the Senate amendment.

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Staff comment.—This is a jurisdictional matter discussed below.

29. Effective Dates

House bill.—Title I and title II both contain points (1) through (3). Title I, but not title II, contains points (4) and (5). Title II, but not title I, contains point (6). 111, 233 (250, A–99)

(1) The provisions apply generally to plan years beginning after the date of enactment.

(2) For plans in existence on January 1, 1974, the provisions take effect for plan years beginning after December 31, 1975.

(3) For collectively bargained plans (in existence on January 1, 1974), the provision takes effect for plan years beginning after December 31, 1976, or if later, the expiration of the collective bargaining agreement in effect on January 1, 1974. However, these plans are to be subject to these provisions not later than plan years beginning after December 31, 1980.

(4) Under title I, but not title II, after enactment and before the effective date of the rules, plans must contribute at least normal cost plus interest on unfunded accrued liabilities. (This is substantially the same as present law for qualified plans.)

(5) Also, under title I, but not title II, the new funding rules apply seven years after the date of enactment for employee organization plans which are in effect on January 1, 1974, and are financed entirely by dues.

(6) Under title II, but not title I, for existing plans maintained by tax-exempt labor organizations the effective date is postponed to plan years beginning after December 31, 1976, or, if later, the first plan year following the date of the second convention of the organization held after the date of enactment. However, these plans are to be subject to these provisions not later than plan years beginning after December 31, 1980.

Senate amendment.—The Senate amendment includes the following provisions: 414 (270, A–99)

(1) Same as title I and title II of the House bill.

(2) In the case of plans in existence on the date of enactment, the amendments apply to plan years beginning after December 31, 1975.

(3), (4), (5), (6) No comparable provisions.

(7) If the Secretary of Labor determines that the new rules would create substantial economic hardship for a plan in existence on the date of enactment, the new rules apply to plan years beginning after a later date as specified by the Secretary of Labor, but not later than after December 31, 1981. Criteria which may be used for determining substantial economic hardship are provided. If such an extension is granted, plan

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benefits may not be increased by amendment while the extension is in effect.

Staff comment.—Some of the staff believe the effective dates for funding should be the same as for vesting, and others believe (if an early effective date is chosen for vesting) that the effective dates for funding should be later than for vesting.

ACTUARIES

1. Reports by Actuaries to Department of Labor

27, 35 (72, 82) *House bill.*—These rules are included only in title I.

(1) The annual report filed with the Secretary of Labor is to include an actuarial report with information as to the minimum contributions, normal cost, accrued liabilities, asset values, etc.

(2) The annual report also is to include the opinion of an enrolled actuary (a) that the contents of the actuarial report are reasonably related to the experience of the plan and to reasonable expectations, and (b) that the plan uses assumptions which, in combination, offer the single best estimate of anticipated experience under the plan.

513 (82) (3) An actuarial valuation of the plan generally is to be made every third plan year.

Senate amendment.—(1) The annual report filed with the Secretary of Labor is to include a copy of an actuarial report, which is to include the actuarial assumptions used in computing contributions and benefits and used in connection with other information required to be furnished.

(2), (3) No comparable provision with respect to reports filed with the Labor Department.

Staff comment.—(1) See Reporting and Disclosure—Labor Department in a subsequent part.

(2) See Funding, item 12, *Staff comment.*

(3) The conferees may wish to adopt the rules of the House bill.

2. Reports by Actuaries to Internal Revenue Service

269 (A–151) *House bill.*—These rules are included in title II.

(1) Actuarial reports generally are to be filed with the Secretary of the Treasury every three years.

(2) The actuarial report is to include a plan description, a description of the funding method and actuarial assumptions, etc.

(3) The actuarial report also is to include (a) a statement by the enrolled actuary that to the best of his knowledge the report is complete and accurate, and (b) a statement of his opinion regarding the reasonableness of the funding methods and actuarial assumptions used.

(4) A penalty of $1,000 is to be imposed for each failure to file an actuarial report, unless due to reasonable cause.

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Senate amendment.—Substantially the same as the House bill. 563 (A–151)

Staff comment.—The conferees may wish to instruct the Department of Labor and the Internal Revenue Service if at all possible to consolidate their actuarial reports. They may also wish to consider the use of a joint board in order to assure as much of this coordination as possible.*

3. Enrollment of Actuaries

House bill.—Title I and title II are essentially the same. 27, 271 (73, A–154)

(1) Reasonable standards of qualifications are to be established for enrolling actuaries to practice before the government.

(2) If a person applies for enrollment before January 1, 1976, the standards and qualifications are to include a requirement for actuarial experience or experience in pension plan administration.

(3) If an individual applies for enrollment after January 1, 1976, the standards and qualifications are to include education and training in actuarial mathematics and methodology (evidenced by a college degree or successful completion of examination), and appropriate actuarial experience.

(4) Both the Secretaries of Labor and Treasury are to separately enroll actuaries to practice before their respective departments. However, neither the Secretary of Labor nor the Secretary of the Treasury is to issue regulations defining the standards and qualifications for enrollment without the approval of the other.

Senate amendment.— 565 (72, A–154)

(1) The Secretary of the Treasury is to establish standards and qualifications for enrolling actuaries to practice before the Internal Revenue Service.

(2) The Senate amendment does not include a "grandfather" provision as under the House bill.

(3) The Senate amendment does not specify the types of standards and qualifications that are to be used after January 1, 1976.

(4) No comparable provision.

Staff comment.—(1), (3) The conferees may wish to generally adopt the rules of the House bill.

(2) With respect to the "grandfather" provision, the conferees may wish to (a) provide that the standards for qualification are to include a requirement for "responsible actuarial experience relating to pension plans," and (b) not provide for enrollment based on experience in pension plan administration.

(4) The conferees may also wish to consider providing that actuaries are to be enrolled to practice before the government by a joint commission composed of

* There was not full staff agreement on this point.

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persons appointed by the Department of Treasury and the Department of Labor. This Commission would set uniform standards for both enrolling and disenrolling actuaries.*

4. Effective Dates

73,273 (146, A-156) *House bill.*—The provisions of title I are to take effect six months after the date of enactment.

Under title II, actuarial reports are to be required for years in which the new funding rules become effective, and the provisions regarding enrollment of actuaries are to take effect on the date of enactment.

537,566 (145, A-156) *Senate amendment.*—The provisions in the Senate amendment regarding reporting to the Secretary of Labor are to take effect January 1, 1974.

The provisions requiring actuarial reports to the Secretary of the Treasury are to apply to plan years beginning on or after January 1, 1976. The provisions governing enrollment of actuaries are to take effect on the date of enactment.

Staff comment.—With respect to reports to the Department of Labor, the conferees may wish to provide that these provisions are to go into effect at the same time that the other reporting requirements are to go into effect (see Reporting and Disclosure—Labor Department, in subsequent part).

With respect to reports to the Department of Treasury, the conferees may wish to provide that these provisions are to go into effect for years in which the new funding rules become effective or at such earlier time as the Treasury Department may by regulation provide.

With respect to enrollment of actuaries, the conferees may wish to provide that these provisions are to go into effect as soon as regulations are published, but no later than six months after the date of enactment.

STAFF COMMENTS RELATING TO JURISDICTIONAL MATTERS [3]

The staff suggests the procedure outlined below will provide a significant and appropriate role in the enforcement of the participation, vesting and funding standards to both the Department of Labor and the Internal Revenue Service.

The concept of repeating the participation, vesting and funding standards in titles I and II is generally

* There was not full staff agreement on this point.

[3] While recognizing that the staffs have made a valiant effort to resolve the jurisdictional problem, some staff members believe the proposed solution falls short of eliminating the inevitable complexities, costs and inequities which will result from dual jurisdiction and enforcement.

not preferred by the Senate staff members.[4] However, it is believed that repetition of this type need not result in duplication if the writing of the regulations on the subject (although in two titles) is assigned to a single administrative agency. In this regard, the Department of Labor might write the regulations on preemption, the definition of a year of service, the definition of a break in service, the variances which are subject to the discretion of the Secretary of Labor, and possibly other minor items which would be more appropriately handled by the Department of Labor. The remaining regulations in title I might simply represent an adoption of comparable regulations prepared for the Internal Revenue Service for title II.

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As indicated previously, it is not expected that the administrative functions of the two agencies will result in any unnecessary duplication. The manner in which this is effected can be shown by indicating the activities of each agency, first in the so-called initial stage jurisdiction (that is, when a plan is requesting a determination of qualification), and second in the operational stage jurisdiction. The functions of the two agencies are discussed below under these two headings.

A. Initial Stage Jurisdiction

(1) The applicant, if he files for qualification with the Internal Revenue Service, must notify the Department of Labor, the Pension Insurance Corporation, and the participants of his intention to request such a determination.

(2) At any time prior to qualification, the Secretary of Labor (in his discretion) may upon petition of a group of participants intervene on their behalf in an Internal Revenue Service qualification determination relating to vesting or participation either at the time of its administrative consideration by the Internal Revenue Service or in connection with an appeal with respect to an adverse determination at the time of consideration by the Tax Court.

(3) The Secretary of Labor (in his discretion) upon petition of the Pension Insurance Corporation may intervene on its behalf in an Internal Revenue Service qualification determination relating to participation, vesting, or funding.

(4) In a case where the Internal Revenue Service finds that a plan is qualified, it is to certify this fact to the Department of Labor and the Department of Labor is to accept this certification as conclusive evidence of initial compliance with the participation, vesting, and funding standards.

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[4] To provide assurance as to joint jurisdiction if there were only one title, they would suggest that a statutory provision could provide that jurisdiction in these areas would be shared by the Labor and Tax committees.

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(5) The plan must register with the Department of Labor and include in the registration, certification of participation, vesting, and funding qualification. It must also file with the Department of Labor a full description of its plan.

(6) The sponsor of the plan retains his right to appeal adverse determinations through the administrative procedures of the Internal Revenue Service and ultimately to the Tax Court.

(7) In the case of a plan which does not seek Internal Revenue Service qualification for tax purposes, the Secretary of Labor can through the Federal courts require compliance with the participation, vesting, and funding standards of the bill to the extent such plan is subject to its jurisdiction.*

B. Operational Stage Jurisdiction

(1) Plans which are qualified under the tax law would generally be audited by the Internal Revenue Service. Where problems come to the attention of the Department of Labor, as a general rule it will deal directly with the matters relating to individual benefits but will take up with the Internal Revenue Service broader issues which relate to the issue as to whether the plan is operating according to qualified standards.

(2) With respect to the matters relating to participants' benefits which remain with the Department of Labor, it would, assuming violation of Federal law is involved, secure compliance by court action.

(3) The Internal Revenue Service would only disqualify a plan for violation of participation or vesting standards after national office review. During the national office review, the Department of Labor would be a participant and have an opportunity to reflect its views. Any disqualification, however, would be held in abeyance (except in the case of jeopardy) for a period of at least 60 days to determine whether the Department of Labor wanted to require compliance through direct court action. The Service could, if it saw fit, hold its action in abeyance for any additional period of time it believed was desirable while the Department of Labor was seeking to compel compliance.*

(4) The Internal Revenue Service would submit to the Department of Labor any portions of 30-day letters dealing with pension plans. The Department of Labor would indicate to the Internal Revenue Service any action it has taken with respect to individual benefits.

(5) The Internal Revenue Service would in its national office review of funding with respect to any employer inform the Department of Labor before the imposition of the 5-percent or 100-percent penalty and give it an opportunity to reflect its views in this re-

*Not full staff agreement with these points.

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spect. In addition, the Department of Labor, representing the Insurance Corporation, could shortcut the normal administrative procedures of the Internal Revenue Service and petition the national office to disqualify a plan where funding is inadequate and where it is in the interest of the Insurance Corporation to take immediate action. The Department of Labor could, through its authority to provide variances, modify the funding requirements.*

(6) The Internal Revenue Service would inform the Department of Labor before imposing a 5-percent excise tax with respect to cases involving violations of fiduciary standards by parties in interest. It would also consult with the Labor Department before the imposition of any 100-percent penalty in this case.[5]

(7) The Labor Department would have full jurisdiction over violations by fiduciaries.[5]

(8) Employees believing that the administration of pension plans was not being carried on according to law or their contractual rights under the plan would retain the right to bring action in the Federal courts. The Internal Revenue Service or Department of Labor would have the right to intervene in any such case if the case involved the general administrative determinations made by the Internal Revenue Service under plans generally*

PORTABILITY, SOCIAL SECURITY REGISTRATION, TAX-FREE ROLLOVERS

1. Central Portability Fund

House bill.—The House bill does not provide for a central portability fund.

Senate amendment.—A voluntary central portability fund is to be established to enable an employee who changes jobs to consolidate all of his vested retirement benefits in a single account in a government maintained central fund. Employers with tax-qualified plans may register (and withdraw registration) with the central fund on a voluntary basis. When an employee leaves an employer who is registered with the central fund, he may direct the employer's qualified plan to pay the value of his entire vested benefits to the central fund. The central fund is to establish an account for each employee on whose behalf it receives funds. The central fund will invest its assets and its income will be allocated to the participants' accounts. Funds may be invested in U.S. government obligations or interest-bearing accounts (or certificates of deposit) of banks, savings and loan

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(399)

[5] The two departments should coordinate the regulations governing party-in-interest transactions.

*There was not full staff agreement on this point.

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associations, and credit unions which are members of a Federal insurance system (*e.g.*, Federal Deposit Insurance Corporation).

Income earned on amounts in the central fund will not be taxed until it is distributed to the participants or their beneficiaries, and transfers between the central fund and qualified plans will be tax-free.

On a participant's retirement (no earlier than age 59½ and no later than age 70½) the central fund will pay him the value of his account or, at his request, will distribute an annuity contract to him. If a participant is disabled, payment may be made at that time, or if he dies prior to retirement or disability, payment will be made to his beneficiaries. Alternatively, if a participant is hired by an employer who is a member of the central fund, the participant may direct (with this employer's concurrence) the central fund to transfer the value of his account to the new employer's qualified plan, to purchase actuarily equivalent retirement benefits in this plan. This transfer would be tax-free.

The central fund is to be operated by the Pension Benefit Guaranty Corporation which is to be established within the Labor Department (the Corporation is also in charge of the insurance program, under the Senate bill). Administrative expenses incurred in carrying on the portability program are to be provided for by appropriations. The Corporation is to establish the rules which govern the fund's operation, including its relations with individual participants and employers.

Staff comment.—Some of the staff believe that the central portability fund should be established and some of the staff believe it should not be established.

An alternative that the conferees may wish to consider would be to combine some of the provisions of the tax-free rollover (described below in item 2) with some of the portability provisions in the Senate bill. Under this possible compromise:

(1) Amounts could be transferred on a tax-free basis from qualified plans to an individual retirement account when an employee leaves employment. These funds could remain in the individual retirement account on a tax-free basis until the employee retires, or until he acquires employment with a new employer. With the approval of the new employer, the employee could transfer funds on a tax-free basis from his individual retirement account to a qualified plan of this employer.

(2) The Department of Labor would provide individuals actuarial assistance on the transfer of funds from an individual retirement account to a pension plan, so the employee could determine if the benefits he was acquiring in the plan were in an appropriate amount.

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(3) The Department of Labor would be directed to assist employers, etc., in their efforts to provide greater retirement protection for individuals who are separated from employment and covered under plans. The assistance would include, but not be limited to, the development of reciprocity arrangements between plans in the same industry or area and the development of special arrangements for portability or credit within a particular industry or area.

(4) If a plan allowed an employee, on terminating employment, to direct that the amount of his vested benefits are to be transferred to an individual retirement account, then the plan must allow this for all participants.

(5) The tax-free transfer from individual retirement accounts to qualified plans would be allowed only with respect to amounts (and earnings thereon) previously received from a qualified plan. A separate accounting would be required to keep track of these amounts.

(6) A recipient plan could not discriminate (within the meaning of the Internal Revenue Code) between participants who wish to transfer money from individual retirement accounts to the plan.

(7) Restrictions would be imposed on the transfer of funds from an individual retirement account to a qualified plan so that individuals could not avoid existing tax rules by transferring funds between individual retirement accounts and qualified plans.

2. Tax-free Rollovers

House bill.—These provisions are included only in Title II. 302, 317 (A–206, A–231)

(1) Money or property may be distributed from a tax-qualified plan or from an individual retirement account to the plan participant, on a tax-free basis, if this same money or property is reinvested by the participant within 60 days in a qualifying individual retirement account.

(2) In the case of distributions from a qualified plan, the distribution must occur on account of the individual's separation from service and within one taxable year to qualify for this treatment. Additionally, the participant must receive his entire interest in the plan.

(3) Also, in the case of distributions from a qualified plan, the amount contributed to the individual retirement amount is to be the amount received, less the amount contributed to the plan by the individual as an employee contribution.

(4) Tax-free rollovers between individual retirement accounts may occur only once every three years.

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435, 591 (A–206, A–231)

Senate amendment.—The provisions of the Senate amendment are as follows:

(1) Substantially the same as the House bill. In addition, however, reinvestments may be made on a tax-free basis in another qualified plan or in the central portability fund. Furthermore, amounts equal to the employee's own voluntary nondeductible contributions to the plan need not be reinvested.

(2) Substantially the same as the House bill. However, the tax-free rollover is available only with respect to complete distributions from a plan that occur within 12 months after termination of employment.

(3) Amounts equal to the employee's own voluntary, nondeductible contributions to the plan may be reinvested, but need not be so.

(4) Same as House bill.

Staff comment.—

(1) If the conferees decide to accept the staff's suggestion described above, under item 1. *Central Portability Fund*, then the policy of the Senate bill allowing reinvestment of a rollover contribution from an individual retirement account to a qualified plan should be accepted also to the extent that the amount initially came from a qualified plan.

(2) The conferees may wish to adopt the policy of the Senate bill with respect to limiting rollovers from a qualified plan to distributions that occur within 12 months after termination of employment (by regulation the Treasury Department could provide for situations where rollovers would be permitted more than 12 months after employment is terminated).

(3) To the extent that the conferees adopt the staff suggestion in *Central Portability Fund*, item 1, the conferees may wish to provide that employee contributions may be rolled over on a tax-free basis to an individual retirement account.

(4) This provision is the same in both bills.

3. Registration with Social Security

42, 259, 267 (96, A–137)

House bill.—Title I and title II are essentially the same.

(1) Under title I, each plan which must file an annual report with the Secretary of Labor is to file an annual statement regarding individuals who have terminated employment in the year in question and who have a right to a deferred vested benefit in the plan. Under title II, a similar report also is to be filed with the Internal Revenue Service.

(2) The plan administrator also is to furnish each person an individual statement giving him the same information which is reported to the Government.

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(3) The Social Security Administration is to maintain records of the retirement plans in which individuals have vested benefits, and is to provide this information to participants and beneficiaries on their request and also on their application for Social Security benefits.

(4) The provisions governing registration with Social Security are to apply to a multiemployer plan only to the extent provided in regulations.

Senate amendment.—The Senate amendment is substantially the same as the House bill, with differences noted below. 360 (96, A–137)

(1) Plans are to report only to the Internal Revenue Service and not to the Secretary of Labor.

(2), (3) No differences.

(4) No comparable provision.

Staff comment.—The conferees may wish to adopt the provisions of the House bill.

4. Effective Dates

House bill.—

(1) The tax-free rollover provisions are to take effect on January 1, 1974. 73, 273, 321 (146, A–236)

(2) The provisions for registration with Social Security are to take effect 6 months after enactment under title I, and are to apply to plan years beginning after December 31, 1975, under title II.

Senate amendment.—

(1) The tax-free rollover provisions are generally to be effective on enactment. 365, 440 (A–156)

(2) The provisions for registration with Social Security are to be effective for plan years ending after December 31, 1973.

(3) The central portability funds provisions are to take effect on enactment.

Staff comment.—

(1) The conferees may wish to provide that the tax-free rollover provisions generally are to take effect on the date of enactment.

(2) The conferees may wish to provide that the provisions requiring registration with Social Security are to apply to plan years beginning after December 31, 1975, except that reports need not be made by Social Security for 3 years after that date.

(3) If the conferees decide to establish a central portability fund, they may wish to provide that the central portability fund provisions are to take effect on enactment.

[COMMITTEE PRINT]

SUMMARY OF DIFFERENCES BETWEEN THE SENATE VERSION AND THE HOUSE VERSION OF H.R. 2 TO PROVIDE FOR PENSION REFORM

PREPARED FOR THE USE OF

THE HOUSE AND SENATE CONFEREES ON H.R. 2

PART TWO

TERMINATION INSURANCE
REPORTING AND DISCLOSURE

JUNE 5, 1974

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PLAN TERMINATION INSURANCE

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1. Administering Corporation

House bill [1].—Plan termination insurance is to be administered by a new corporation with the Department of Labor called the Pension Benefit Guaranty Corporation. 113 (252)

Senate amendment.—The Senate amendment also sets up a Pension Benefit Guaranty Corporation within the Department of Labor. 442 (252)

Staff comment.—The conferees may wish to consider placing the Corporation within, rather than with, the Department of Labor.

2. Administration of Corporation

House bill.—The Corporation is to be administered by a board of directors consisting of the Secretary of Labor and two officers or employees of the Department of Labor chosen by the Secretary. The Secretary of Labor is to be the chairman of the board. 113 (253)

Senate amendment.—The administering board of directors is to consist of the Secretaries of Labor, Commerce, and the Treasury, with the Secretary of Labor as chairman. 444 (253)

Staff comment.—The conferees may wish to accept the rule of the Senate amendment, and also to provide that the board of directors is to establish policies for the Corporation, while the operational authority is to be that of the Department of Labor.

3. Tax Exemption

House bill.—The House bill contains no provision specifically providing tax exemption for the Corporation, its fund, and its earnings.

Senate amendment.—The Corporation is to be exempt from Federal taxation (except for social security and unemployment taxes) and from State and local taxation (except that the Corporation's real and tangible personal property, other than cash and securities, may be taxed to the same extent according to value as other such property is taxed). 445 (258)

Staff comment.—The conferees may wish to adopt the rule of the Senate amendment.

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†"Page numbers" outside parentheses are the numbers of the relevant pages in the print of H.R. 2 dated March 4, 1974. The first 353 pages of that print, in linetype, represent the bill as passed by the House of Representatives; the remaining pages of that print, in italic type, constitute the Senate amendment.

"Page numbers" inside parentheses are the numbers of the relevant pages in the comparative prints prepared by the staffs.

[1] The House bill provisions on plan termination insurance are those of title I only. Title II does not deal with plan termination insurance.

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4. Borrowing Authority

118 (263) *House bill.*—The Corporation is to be authorized to borrow up to $100 million from the Federal Treasury.

452 (263) *Senate amendment.*—The Senate amendment provision is virtually identical to that of the House bill.

Staff comment.—The conferees may wish to accept the Senate rule.

5. Premiums

House bill.—

119 (265) (1) Separate uniform premium rates for basic benefit and ancillary benefit insurance are to be established by the Corporation for single-employer plans and for multiemployer plans.

119 (267) (2) (a) Part of the premium amount for a particular plan is to be based on the plan's unfunded insured benefits. The premium rate on this part is not to exceed 0.1 percent for single-employer plans and 0.025 percent for multiemployer plans.

120 (267) (b) The other part of the premium amount for a particular plan is to be based on the plan's total (i.e., whether or not funded) insured benefits. The rate for total insured benefits is to be determined separately for single-employer and multiemployer plans on a yearly basis by the Corporation at levels calculated to produce the same aggregate premium revenue as is produced by the premiums based on unfunded insured benefits.

119 (267) (3) (a) The Corporation may revise the rates as to the unfunded insured benefits; it is to annually revise the rates as to the total insured benefits, in order to correspond to the requirements in point (2) (b).

124 (277) (b) If the Corporation wishes to exceed the rate limits specified in point (2), or change the rate base, it may do so, but only as to plan years beginning more than 30 days after Congress approves the revision by a House concurrent resolution.

123 (274) (4) The Corporation may charge interest, at appropriate rates, on unpaid premiums that are past due.

120, 128 (269, 289) (5) The premiums for such supplemental coverage as the Corporation determines to offer are to be based upon the actual and projected costs of providing such coverage.

117, 124, 143 (261, 275, 324) (6) Each single-employer plan choosing to avoid contingent employer liability is to pay a premium based upon (a) the plan's insured benefits, (b) the plan's unfunded insured benefits, and (c) the actual and projected experience of all plans choosing to avoid contingent employer liability.

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(7) Since multiemployer plans or employers in those plans would not be liable, under the House bill, for losses suffered by the Corporation as a result of termination of such plans, there is no provision fixing a premium rate for multiemployer plans to pay to avoid this liability.	143 (324)
Senate amendment.—	
(1) Separate uniform premium rates are to be established by the Corporation for single-employer plans and for multiemployer plans.	447 (265)
(2) The premium rate through 1976, for both single-employer plans and for multiemployer plans, is to be $1 per year per participant.	447 (267)
(3) The Corporation may revise both the premium rate and the rate base for years after 1976, but any such change is not to become effective until plan years beginning more than 30 days after Congress approves the change by a House concurrent resolution.	448 (277)
(4) Since the premiums are to be collected as excise taxes, the Internal Revenue Code's excise tax interest, addition to tax, and penalty provisions would apply to these amounts.	490
(5) The Corporation is permitted to determine which if any ancillary benefits are to be includible as covered benefits under the basic premium; also, it is authorized to insure other benefits and to establish and collect the necessary premiums.	455, 461 (288, 326)
(6) and (7) Each plan (single-employer or multiemployer) choosing to avoid contingent employer liability is to pay such premiums as the Corporation determines are necessary to cover payments resulting from the offering of such contingent liability insurance.	460 (275)
Staff comment.—	
(1) The conferees may wish to require the Corporation to establish separate uniform premium rates for single-employer plans and for multiemployer plans.	
(2) In order to provide a relatively simple initial premium structure, the conferees may wish to consider establishing (for the first 2 years) a premium rate of $1 per plan participant for single-employer plans and 50 cents per plan participant for multiemployer plans, with an option to use instead the formula proposed in the House bill (to the extent the House bill formula does not lower the plan's liability for premium payments to less than half of the amount the plan would have had to pay under the $1 or 50 cents rules). The conferees may wish to require that no participant in a multiemployer plan is to be counted more than once as to any one year's premium for that plan.	

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(3) The conferees may wish to provide the following as to premium rates after the first 2 years:

(a) The Corporation may revise the rates and the rate bases, but (i) if it bases premiums on number of participants, the rates are not to exceed the $1 and the 50 cents referred to in point (2), above; (ii) if it bases premiums on unfunded insured benefits, the rates are not to exceed the 0.1 percent and 0.025 percent referred to in *House bill* point (2)(a), above; (iii) if it bases premiums on total insured benefits, the rates are not to exceed the amounts which would be calculated under *House bill* point (2)(b) above; and (iv) if it uses any 2 or all 3 of the above 3 rate bases, it must set the premium rules so as to produce approximately equal amounts of aggregate premium revenue from each of the rate bases it uses.

(b) If the corporation wishes to (i) exceed the rate limits specified above, (ii) produce unequal amounts of aggregate premium revenue from the different rate bases, or (iii) use different rate bases, it may do so, but only as to plan years beginning after Congress approves these revisions.

(4) The conferees may wish to provide for the collection of premiums as such, and not as taxes, and with the enforcement mechanism to be a civil action brought by the Corporation. The conferees may also wish to provide that all premiums are to be paid by the plan, and that there will be a civil penalty equal to 100 percent of the premium liability if premiums are not paid when due, with the penalty also to be paid by the plan. In addition, the Corporation might be enabled to charge interest at a current rate (as in the House bill) for unpaid premiums that are past due. Coverage would continue even though premiums are not paid.

(5) The conferees may wish to permit the Corporation to insure benefits that are supplemental to the basic retirement and ancillary benefits, and to prescribe premiums based on actual and projected costs of this coverage. Some staff members maintain that these premium payments should not be based upon any uniform rate structure, while others assert that premiums for the insurance of each category of supplemental benefits (such as medical and layoff benefits) should be at separate uniform rates.

(6) and (7) The conferees may wish to adopt the House bill's provision for establishing the additional premium to be paid by single-employer plans insuring themselves against contingent liability, and this system might be extended to multiemployer plans.

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The conferees may also wish to provide specifically that premiums in single-employer plans are to be based upon uniform rates and that premiums in multiemployer plans are to be based upon uniform rates.

6. Valuation of Plan Assets and Insured Benefits

House bill.— 121 (271)

(1) The Corporation is to adopt rules for valuation of a plan's assets for purposes of determining premium payment amounts. Special rules are provided as to securities for which a market exists and as to bonds or other evidences of indebtedness.

(2) Also for the purpose of determining a plan's premium payment amounts, the Corporation is to adopt rules on the valuation of a plan's insured benefits. Special rules are provided as to triennial valuation of plan liabilities and as to comparability of mortality rates and interest rates. 122 (272)

Senate amendment.—The actuarial value of a benefit is to be determined in accordance with the Corporation's bylaws. 457 (291)

Staff comment.—The conferees may wish to authorize the Corporation to establish by regulations equitable methods of valuing assets and benefits.

7. Trust Funds

House bill.—

(1) There is to be a Single-Employer Primary Trust Fund and a Multiemployer Trust Fund. 117 (261)

(2) The Corporation is to have discretion to establish a Single-Employer Optional Trust Fund (for employers in single-employer plans electing to pay the extra premium charge to avoid employer liability) and other trust funds.

(3) The resources of each fund are to be kept separate from the other funds and are not to be used to pay the expenses and losses of another fund.

Senate amendment.—

(1) There is to be a Pension Benefit Guaranty Fund. 446, 460, 461 (261, 275, 326)

(2) Authority is granted to establish funds for insurance of contingent employer liability and insurance of other classes of benefits.

(3) It is intended that premium rates for single-employer plans and multiemployer plans reflect experience and corporation costs for single-employer plans and multiemployer plans, respectively, even though the assets are maintained in a single fund.

Staff comment.—The conferees may wish to provide for separate funds for single-employer and multiemployer plans. Under this approach, the fund for single-employer plans would encompass, as to those plans, the basic termination insurance (including that

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of single-employer plans voluntarily covered), the employer liability insurance, and the assets of terminated plans which the Corporation has liquidated or transferred into the fund. The fund for multiemployer plans would encompass the corresponding element for those plans. The conferees may also wish to provide for two additional funds—one for the insurance of supplemental benefits of single-employer plans and one for the insurance of supplemental benefits of multiemployer plans. The resources of each fund are to be kept separate from the other funds and are not to be used to pay the expenses of another fund.*

8. Premium Phase-in

121 (270) *House bill.*—The amount of premiums otherwise payable by any plan (except a successor plan) is to be phased in from 50 to 100 percent, depending on how long the plan has been in effect, so that a plan in effect 6 years or more would pay 100 percent of the premium rate.

Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to consider following the approach of the Senate amendment (i.e., not providing for phasing in of premium payments).

9. Plans Covered

House bill.—

98, 125 (219, 283) (1) Except as noted in point (2) below, the insurance provisions are to apply on a mandatory basis to all plans to which the funding standards apply.

(2) However, the insurance provisions are not to apply to a plan unless:

(a) the plan has more than 25 participants (of whom at least 10 have nonforfeitable benefits) at all times during any 5 consecutive years; and

(b) the plan's assets cover at least 10 percent of the present value of the plan's insured benefits.

453 (283) *Senate amendment.*—

(1) The insurance provisions are to apply to all qualified plans except:

(a) money purchase pension plans, profit-sharing plans, and stock bonus plans,

(b) governmental plans,

(c) church plans (other than those electing to come under the insurance provisions) and

(d) certain fraternal association plans.

(2) No corresponding provisions.

Staff comment.—

(1) The conferees may wish to provide that (apart from what may be decided below under point (2),

*Not all staff members agree with this point.

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relating to plans with relatively few participants and plans with little assets) all plans that are subject to the funding standards of the bill (other than defined contribution plans) are to be covered.

This would mean that the following kinds of plans would be excluded from mandatory insurance coverage:

(a) Governmental plans, including plans financed by contributions required under the Railroad Retirement Act.

(b) Church plans that do not elect coverage.

(c) Non-U.S. plans for nonresidents aliens, substantially all of the participants and beneficiaries of which are nonresident aliens.

(d) Unfunded plans maintained by the employer primarily to provide deferred compensation for select management or highly-compensated employees.

(e) Plans which have not provided for employer contributions after the date of enactment.

(f) Profit-sharing and stock bonus plans (money purchase plans also would be excluded).

(g) Plans funded exclusively by the purchase of individual qualified insurance contracts and group insurance contracts which have the same characteristics, as determined by regulations, as individual qualified insurance contracts.

(h) Unfunded plans which provide benefits in excess of the limitations in the Internal Revenue Code on contributions and benefits which may be adopted, and which are plans for the highly-paid.

(i) Nonqualified plans exclusively for sole proprietors, or exclusively for partners all of whom own more than 10 percent of the capital or profits interest in the partnership.

(j) Plans established by fraternal societies or other organizations described in section 501(c)(8), (9), or (18) of the Internal Revenue Code which receive no employer contributions and which cover only members (not employees). The conferees may also wish to provide that all plans are to be excluded from coverage during their first 5 years of existence, but to provide for refunds of all premiums paid during that period for plans terminating before coverage.

(2) Some staff members would follow the House rule (generally excluding from mandatory coverage those plans with fewer than 26 participants or with assets covering less than 10 percent of the insured benefits). Others would follow the Senate approach (not excluding such plans).

10. Benefits Covered

House bill.—

(1) Insurance protection is to apply to benefits 127
(other than those which became vested solely because (288)

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of the plan's termination) required to be vested under the statutory minimum vesting schedule designated by the plan (and to certain ancillary benefits), up to the insurance limitations, except as noted below.

129 (291) (2) The terminated plan must have been subject to the insurance provision for more than 5 years prior to termination if any of its benefits are to be covered, but the Corporation may authorize insurance of benefits under other plans that have been in effect at least 5 years if the Corporation believes that the plan has been in substantial compliance with the standards of the Act before the plan was subject to the Act, and that the coverage will not prevent equitable underwriting of benefits otherwise covered. Also, the insured benefits must have arisen under plan provisions adopted and in effect more than 5 years before termination.

128 (289) (3) If the Corporation determines that additional benefits are insurable, the Corporation may prescribe the conditions and the premiums to be charged for this insurance. Insurance payments for these benefits are not to be made from either the Single-Employer Trust Fund or the Multiemployer Trust Fund.

126 (286) (4) The Corporation may also insure the benefits of plans not otherwise covered if they are tax-qualified and registered under section 512 of the Act, and if the coverage will not unreasonably increase the premium payments of plans that are required to be insured.

131 (293) (5) For purposes of meeting the time requirements, periods in which predecessor plans have been in effect are added to periods in which successor plans have been in effect.

Senate amendment.—

455 (288) (1) Insurance protection is to apply to benefits (other than those which became vested solely because of the plan's termination) that are vested under the plan, even though they exceed the statutory minimum vesting requirements (and to ancillary benefits which the Corporation determines to be insurable), up to the insurance limitations, except as noted below.

455 (290) (2) The insured benefits must have arisen under plan provisions adopted and in effect for at least 3 years prior to termination in order to be covered, and no discretionary coverage is provided for plans or benefits not in effect for 3 years.

461 (326) (3) Essentially similar to the House rules.

(4) No corresponding provision.

453 (283) (5) For purposes of meeting the time requirements, periods in which predecessor plans were in effect are added to the periods in which successor plans have been in effect.

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Staff comment.—

(1) The conferees may wish to adopt the Senate rule.

(2) The conferees may wish to provide that plans and plan amendments are to be fully covered (up to the insurance limitations) after they have been in existence for five years and that, in the meantime, there is to be no phasing in or insurance coverage. (But see "*22. Transitional Rule*," *infra.*)

(3) The conferees may wish to provide that if the Corporation determines that supplemental benefits are to be insured, the Corporation may prescribe the premiums to be charged for this coverage and conditions to the coverage. The staff has not agreed upon whether the premium rates for this coverage should be absolutely uniform or only uniform as to each separate category of supplemental benefits covered. The staff has also not agreed upon whether there should be additional trust funds for this insurance, but the staff has agreed that if additional trust funds are to be established, there should be one for single-employer plans and one for multiemployer plans.

(4) and (5) In addition, the conferees may wish to accept the House proposals dealing with (4) the discretion of the Corporation to insure plans voluntarily requesting coverage, and (5) "tacking on" periods of existence of predecessor and successor plans for purposes of the time requirements for coverage.

11. Insurance Limitations

House bill.—

(1) Insured benefits with respect to an individual are not to exceed the actuarial equivalent of an annuity, beginning at age 65, of $20 per month per year of credited service. 128 (290)

(2) This maximum is to be adjusted according to changes in all employees' average wages, as reported to the Secretary of Health, Education, and Welfare. 129 (290)

(3) The amount of insurance payable with respect to any individual is not to exceed this limitation regardless of the number of plans in which that individual was a participant. 131 (294)

(4) Insurance is withheld entirely from any "substantial owner"—a person who owns a sole proprietorship, more than 5 percent of a partnership, or 5 percent of either the entire stock or the voting stock of a corporation. 131 (296)

Senate amendment.—

(1) Insured benefits with respect to a participant are not to exceed the actuarial equivalent of the lesser of (a) 50 percent of average wages during the 5 years preceding termination or (b) $750 monthly. 456 (290)

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457 (291) (2) The $750 amount is to be adjusted according to changes in the social security contribution and benefit base.

457 (294) (3) Essentially the same as the House bill.

458 (296) (4) The insured benefits of a participant who was an "owner-employee" during the plan year of the termination or any of the preceding 3 years are reduced by the amount of that participant's pro rata share of any accumulated funding deficiency at the time of termination.

Staff comment.—

(1) The conferees may wish to provide that insured benefits with respect to a participant are not to exceed the actuarial equivalent of the lesser of (a) 100 percent of average wages during the individual's highest-paid 5 years of participation in the plan or (b) $750 monthly.*

(2) The limits described in point (1) would be adjusted according to changes in the social security contribution and benefit base.

(3) The amount of insurance payable with respect to any individual is not to exceed this limitation regardless of the number of plans in which that individual was a participant.

(4) The insured benefits of a participant who was an "owner-employee" during the plan year of the termination or any of the preceeding 3 years are reduced by the amount of that participant's pro rata share of any accumulated funding deficiency at the time of termination.

12. Effect of Tax Disqualification

132 (298) *House bill.*—Benefits that accrue after a tax disqualification of a plan are not insured.

458 (298) *Senate amendment.*—The Senate amendment is essentially similar to the House bill.

Staff comment.—The conferees may wish to provide that benefits which accrue after a tax disqualification of a plan are not insured.

13. Reportable Events

House bill.—

134 (300) (1) Certain events indicating possible danger of plan termination must be reported by the plan administrator to the Corporation. These events are:

(a) a tax disqualification;

(b) a benefit decrease by plan amendment;

(c) a decrease in active participants to 80 percent of the number at the beginning of the plan year, or 75 percent of the number at the beginning of the previous plan year;

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* Not all staff members agree with this suggestion.

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(d) an IRS determination that there has been a plan termination or partial termination for tax purposes;

(e) a failure to meet the minimum funding standards;

(f) inability to pay benefits when due;

(g) a distribution of $10,000 or more in a 24-month period to a "substantial owner," if the plan has unfunded nonforfeitable benefits after the distribution (unless the distribution was made on account of death);

(h) filing of a report preliminary to a merger, consolidation, transfer of assets or liabilities, or a distribution in excess of $25,000 to a participant in any plan year, or the granting by the Secretary of Labor of a hearing in regard to a variation on the bill's standards; or

(i) the occurrence of any other event which the Corporation determines may be indicative of a need to terminate the plan.

(2) The Secretary of the Treasury is to notify the Corporation of the occurrence of events (a), (d), or (e), or any other event which indicates the plan is not sound, and the Secretary of Labor is to notify the Corporation of the occurrence of events (a), (d), or (h), or any other event which indicates the plan is not sound. 136 (302)

Senate amendment.—

(1) Essentially the same as House bill points (1)(a) through (f). As to point (1)(g), the Senate amendment requires reporting of any distribution of $10,000 or more to an owner-employee (unless the distribution is made on account of death or disability), if the distribution creates or increases unfunded vested liabilities. The Senate amendment does not include provisions corresponding to points (1)(h) and (i) of the House bill. 470 (300)

(2) Essentially the same as the House bill, as to the Secretary of the Treasury; no corresponding provisions as to the Secretary of Labor. 472 (302)

Staff comment.—The conferees may wish to adopt the House bill provision, with the modification that the Secretary of Labor may waive the requirement that any of these events be reported, in accordance with regulations to be established by the Corporation.

14. Terminations Instituted by the Corporation

House bill.—

(1) The Secretary of Labor may terminate a plan, after a hearing, (a) if he determines that (i) the plan failed to meet the minimum funding standards, (ii) the plan is unable to pay benefits when due, or (iii) 137 (304)

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failure to terminate will cause long-run loss to the Corporation, or (b) if the employer or an appropriate employee organization applies to him for authority to terminate.

137 (305) (2) The Secretary of Labor must distribute the plan's assets in accordance with the priority schedule given below under "*19. Distribution of Assets upon Termination*"; he is permitted to distribute the assets without ending the plan or appointing a receiver; and also he may order the plan's continuation under a receiver until all benefit liabilities are satisfied, in which case no benefits may thereafter accrue or vest, and benefits payable would not be limited to insurable benefits. At any time, however, he may wind up the plan (after a hearing) with a distribution of remaining assets.

464 (307) *Senate amendment.*—

(1) (a) The Corporation (not the Secretary of Labor) may institute termination proceedings in a United States District Court in which the plan administrator resides or does business, or in which any of the plan's trust property is located. Causes for the Corporation's intervention may be those described in the House bill, or a distribution in excess of $10,000 to an owner-employee (made other than on account of death or disability) if, after the distribution, there are unfunded vested liabilities.

464 (308) (b) In terminating, the Corporation may, upon notice to the plan, apply for appointment of a trustee for the plan, in which case the plan administrator must show cause within 3 days why the trustee should not be appointed. If a trustee is appointed, the Corporation must apply for a termination decree within 30 days; if the Corporation fails to do so, the assets must be transferred back to the plan administrator.

466 (309) (2) The trustee is granted various relevant powers to be used either prior to termination or both before and after termination. In general, a trustee is to be subject to the same duties as a trustee appointed under section 47 of the Bankruptcy Act.

469 (312) The Corporation may apply for appointment of a trustee or termination of a plan regardless of the pendency in any court of any action against a plan's assets, and the court may stay any such action pending its adjudication.

Staff comment.—

(1) (a) The conferees may wish to provide that, in order for the corporation to terminate a plan, the Corporation must go to court, as under the Senate amendment.

(b) The conferees may wish to specify that the Corporation may submit a list of recommended trustees

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to the court, but that the court is to appoint the trustee, with the preferred choice normally to be the existing plan administrator. In addition, the conferees may wish to specify that the Corporation may ask the court to appoint the Corporation itself as trustee, in special circumstances.

(2) The conferees may wish to enable the Corporation to decide whether the trustee should liquidate the plan immediately or continue to operate it under court supervision, while allowing the trustee, if he disagrees with the Corporation's decision, to ask the court to overrule the Corporation.

The conferees may decide to require the Corporation to create an Advisory Board to suggest trustees, to suggest favorable investments of plans' funds at any particular time, and to advise the Corporation, in view of existing economic circumstances, whether terminating plans should be liquidated immediately or continued in operation under trustees. The Advisory Board might consist of a representative from labor, another from management, and another from the general public.

15. Terminations at the Request of the Plan

House bill.—The House bill requires that an employer or employee organization seeking to terminate a plan must apply to the Secretary of Labor for authority to terminate. 137 (304)

Senate amendment.—A plan administrator wishing to terminate must first notify the Corporation of this fact and may make no termination distributions for 90 days. (This 90-day period may be extended by agreement.) The Corporation must notify the plan administrator within 90 days (or as extended) of its determination whether the plan assets are sufficient to discharge all insured benefit obligations. A notification that the assets are not sufficient is to be treated as a termination by the Corporation as of the date of notification. 461 (304)

If, in terminating with authorization of the Corporation, a plan administrator should find the plan assets insufficient to discharge all insured benefits, he must notify the Corporation, which is then to terminate under the regular proceedings for involuntary terminations. 463 (306)

If an insured plan is changed to a money purchase plan, a profit-sharing plan, or a stock bonus plan (which are not covered by the insurance provisions), the change is treated as a voluntary termination (for which the plan administrator must first obtain authorization). 463 (306)

Staff comment.—The conferees may wish to adopt essentially the Senate amendment, but to provide as

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well that both the plan administrator and the Corporation are to have the option to go to court to request the appointment of a trustee when the best interests of the participants and beneficiaries would thereby be served. In addition, the conferees may wish to provide that there shall be a special expedited court process for all instances in which there is no disagreement between the plan administrator and the Corporation.*

16. Management Functions

House bill.—The Secretary of Labor is given authority to transfer funds of terminated plans to the Corporation for investment and for payment of benefits, as well as to obtain outside financial counsel and to take any other consistent action to assure equitable payments to participants and beneficiaries.

Senate amendment.—Investment of funds of terminated plans is to be handled by the court-appointed trustee.

139 (308) *Staff comments.*—The conferees may wish to provide that the court-appointed trustee is to take charge of the assets of a terminated plan and invest them, that gains and losses thereafter incurred are to adhere to the Corporation, and that the court-appointed trustee may employ financial analysts to advise him on investment and related matters. However, the conferees may also wish to provide that the Corporation may establish investment policies, including whether annuities should be purchased (for plans in general or for particular plans whether or not an insurable event has yet occurred), and that the Corporation may obtain advise for that purpose from an Advisory Board to be established.

466 (310)

17. Duties of Corporation to Secretary of Labor

140 (315) *House bill.*—The Secretary may examine the Corporation's records and require reports as he deems appropriate. There are also requirements for certain regular reports from the Corporation to be transmitted with appropriate comments by the Secretary to the President and Congress.

446 *Senate amendment.*—The Secretary of the Treasury is to be the trustee of the insurance fund and to report annually to Congress.

Staff comment.—The conferees may wish to adopt the House provision.

18. Employer Liability

House bill.—

141 (317) (1) In general, each solvent employer is liable to reimburse the Corporation for insurance benefits paid

* Not all staff members agree with this point.

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because of termination of that employer's plan (other than a multiemployer plan).	
(2) The employer liability is not to exceed 50 percent of the employer's net worth.	141 (317)
(3) The House bill does not provide for employer liabilities in the case of multiemployer plans.	143 (324)
(4) An employer liability which arises because of a termination is to give rise to a lien against the employer's property. This lien is to be subordinate to the basic Federal tax lien. The Corporation is authorized to arrange for payment of this liability on equitable and appropriate terms.	142 (321)
(5) The Corporation is authorized to permit employers to elect to avoid employer liability, upon payment of the appropriate premiums.	117, 123, 143 (261, 275, 324)
(6) A plan may be amended to end further participation, accrual of additional benefits, and further vesting without thereby necessarily causing an insurable termination.	143 (325)
(7) and (8) No corresponding provision.	
Senate amendment.—	
(1) Each employer is liable to reimburse the Corporation for insurance benefits paid because of the termination of that employer's plan (whether or not it is a multiemployer plan).	478, 486 (317, 334)
(2) The employer liability is not to exceed 30 percent of the employer's net worth, determined as of 120 days prior to termination of the plan.	479, 487 (318, 335)
(3) (a) The employer liability on termination of a multiemployer plan is to be allocated among the employers who contributed during the 5 years before termination, in proportion to those contributions. The 30-percent limit (point (2), above) is to be applied separately to each employer.	486 (335)
(b) If a substantial employer withdraws from a multiemployer plan, the withdrawing employer is required to furnish a bond to cover that employer's possible liability if the multiemployer plan terminates within 5 years after the withdrawal. Alternatively, the Corporation is authorized to allocate the multiemployer plan's assets between the participants who are no longer in covered service because of this withdrawal and the other participants, and treat that portion of the plan allocable to the withdrawing employer's employees as though it were a terminated plan. A third alternative is to permit the Corporation to accept an indemnity agreement among the employers in the plan.	482 (330)
(c) A definition is provided for "multiemployer plan" (see Part One of this summary, Participation and Coverage, item 12, page 8).	441 (A-80)

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479, 488 (320, 321) (4) An employer liability which arises because of a termination is to give rise to a lien on the employer's property. This lien is to be subordinate to certain Federal tax liens and also to other liens perfected not later than 30 days after termination. The Corporation is authorized to further subordinate this lien, and also to arrange for payment of this liability on equitable and appropriate terms.

460, 478 (275, 317) (5) (a) The Corporation is authorized to permit employers to elect to avoid liability, on payment of the appropriate premium for each of the 5 plan years immediately preceding the plan year during which the plan terminates. However, the liability will not be avoided if the employer remains in the same business or a similar business. The employer liability is not to apply to the extent that the insurance shortfall arises out of the insolvency of a qualified insurance company.

461 (326) (b) The amendment specifically permits employers to secure, from the private insurance industry, insurance against this liability.

(6) No corresponding provision.

480 (293) (7) A successor employer incurs the liability for insurance losses caused by the termination of its predecessor's plan.

482 (318) (8) If at least 20 percent of an employer's employees (who are participants in the plan) are separated from employment due to the employer's ceasing operations in any facility, that employer incurs employer liability according to the rules regarding liability for losses caused by the withdrawal of "substantial owners" from multiemployer plans.

Staff comment.—

(1) The conferees may wish to agree to impose employer liability in the case of multi-employer plans as well as other plans.

(2) The conferees may wish to adopt the Senate approach, with the employer liability not to exceed 30 percent of net worth, modified as follows: (a) the date of the determination of the employer's net worth is to be 120 days prior to the termination date, and (b) the date of the valuation of the plan's assets and liabilities to be the termination date itself.

(3) (a) The conferees may wish to consider agreeing to the approach of the Senate rule allocating employer liability on terminations of multiemployer plans among the employers who contributed during the five years before termination, in proportion to those contributions, and with the 30-percent limit (point 2, above) to be applied separately to each employer. The conferees may also wish to allow such other equitable approach as may be determined by regulations.

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(b) The conferees may wish to consider adopting the rules of the Senate amendment, except that they may wish to authorize regulations to provide for alternative methods to indemnity bonds in order to assure that a withdrawing substantial employer will contribute its fair share in the event of a plan termination.

(c) The conferees may wish to use the same definition of "multiemployer plan" for the insurance provisions as they agreed to for purposes of the participation provisions, above. In addition, the conferees may wish to provide that, if a plan has more than one employer, but does not qualify as a multiemployer plan under this definition, then the Corporation would be authorized to provide by regulations for allocations of employer liability among the employers in the plan and that such regulations should generally follow the rules for multiemployer plans.

(4) The conferees may wish to provide that the Government lien on account of the employer's liability is to be subordinate to all liens perfected 120 days prior to the termination date and also subordinate to all claims of general creditors existing as of the date of enactment of the insurance provisions.*

(5) The conferees may wish to authorize the Corporation to work out an arrangement whereby private insurers would insure employers against liability for terminations of their plans, but with the Corporation also authorized to provide a governmental insurance against employer liability if a satisfactory private plan cannot be arranged. The conferees may also wish to allow the Corporation to specify the extent to which all employers must purchase the insurance against employer liability (whether the insurance arrangement is public or private) and to permit the Corporation the discretion to determine circumstances under which employer liability insurance benefits would not be paid an employer despite that employer's purchase of the insurance. If a combination of governmental and private insurance is chosen, the conferees may wish to allow the Corporation to require each employer to determine within three years after the effective date whether to take private or the public insurance.

(6) The conferees may wish to provide that where there is a technical plan termination for purposes of the Internal Revenue Code (*e.g.*, a stopping of further accruals), this is not necessarily to be a termination for purposes of the insurance provisions (although the Corporation could make it such a termination),

* Not all staff members agree with this suggestion.

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but that it would be a reportable event. The conferees may also wish to provide that the employer could still claim business deductions for contributions to the plan under the same rules as would apply to regular ongoing plans.

(7) The conferees may wish to consider adopting rules along the line of the Senate amendment relating to a successor employer's liability arising from the termination of a predecessor employer's plan.

(8) The conferees may wish to consider adopting rules along the line of the Senate amendment relating to termination of a substantial facility.

19. Distribution of Assets upon Termination

House bill.—

143, 59 (337, 130) (1) The bill provides for priorities in distribution of plan assets on termination. In general, net assets (assets less expenses and less those assets irrevocably allocated to individual accounts at least 2 years before termination) are allocated in the following order:

(a) employee contributions,

(b) vested benefits of employees already receiving benefits or entitled to choose early retirement (except for disability),

(c) other vested benefits,

(d) other accrued benefits,

(e) interest on employee contributions,

(f) remaining liabilities proposed in the plan for payment upon termination, and

(g) pro rata to each person entitled to receive a distribution on account of priorities (a) through (f).

62 (133) (2) If the assets are insufficient to cover all of the claims within a priority class (after satisfaction in full of the higher priority claims), then they are to be allocated pro rata within that class. However, the plan may grant priority of distribution to a subclass that is established on the basis of age or length of service, or both.

60 (131) (3) There is to be no double allocation of assets resulting from a benefit being includible in more than one priority category. That is, to the extent that a benefit is satisfied in a higher priority category, it is to be removed from entitlement in the lower priority category.

61 (131) (4) If there has been a plan amendment during the 5 years prior to termination and the assets are insufficient to cover all the priority categories, then allocations are to be made, first, in accordance with the benefit formula in effect 5 years before termination, and then in accordance with subsequent formulas, until the assets are exhausted.

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(5) In the case of a plan to which only participants contribute, the first two priority classes are to be interchanged with first priority being given to vested benefits for those receiving benefits or generally entitled to begin receiving benefits upon termination, and second priority being given to employee contributions.	64 (135)
(6) If the present value of the accrued benefits of employees not entitled to coverage is at least 25 percent of the value of the benefits of covered employees for five consecutive years, the House bill provides that the plan is to file a report, and the Secretary is to determine whether a partial termination has taken place. In other cases, as when participants are excluded by a plan amendment, benefits or employee contributions are reduced, or vesting or eligibility requirements are made more restrictive, the Secretary of Labor is to judge, according to all the facts and circumstances, whether a partial termination has taken place.	65 (136)
(7) The Secretary may vary these distribution priorities, after a hearing, if to do so would further the purposes of Title I of the bill, protect plan participants and beneficiaries, prevent a substantial increase in plan costs or administrative burdens or a substantial decrease in benefit levels or employee compensation, and if the application of the priority schedule is detrimental to plan participants.	143, 144 (337, 341)
(8) No corresponding provision.	
Senate amendment.—	
(1) The amendment provides for distribution of plan assets, in the event of termination, in the following order of priorities:	473 (130, 337)
(a) voluntary employee contributions,	
(b) mandatory employee contributions,	
(c) benefits in pay status at least 3 years (at the benefit level existing 3 years before termination),	
(d) other insured benefits.	
(2) Essentially the same as the House bill.	473
(3) Essentially the same as the House bill.	(130, 337)
(4), (5), (6), and (7) No comparable provisions.	473
(8) In cases of voluntary terminations of uninsured plans not yet in existence on the date of enactment of the Act (and those already in existence if they have no written provision governing allocation of assets upon a termination), the same priorities are to apply, with the exception that all insured benefits will have the same priority status as those benefits in pay status for 3 years.	(130, 338) 494 (133)
Staff comment.—	
(1) The conferees may wish to consider providing that, upon termination of a plan covered by the insurance provisions, the plan assets would be allocated in the following order of priorities:	
(a) to voluntary employee contributions, then	
(b) to mandatory employee contributions, then	

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(c) to benefits in pay status for at least three years (and those which would have been in that status for at least three years if the employee had retired that long ago), based on plan provisions in effect five years prior to termination, then

(d) to other insured benefits (if termination insurance is payable), then

(e) to other nonforfeitable benefits, based on plan provisions in effect five years prior to termination, then

(f) to other vested benefits, taking into account benefits added by plan amendments adopted within the previous five years in order of adoption (unless assets are exhausted prior to taking such an amendment into account), and then

(g) to all other benefits.

(2) The conferees may wish to require pro rata allocations within a class, but also to permit a plan to provide subclass priorities, within limitations to be set by regulations and as long as the creation of the subclass priorities does not violate the antidiscrimination requirements of theInternal Revenue Code.

(3) The conferees may wish to provide that there is to be no double allocation arising from a benefit otherwise includible in more than one priority category as is provided for in both the House bill and the Senate amendment.

(4)–(8) These items are replaced by the staff comment on point (1).

20. Recovery of Plan Payments

House bill.—The House bill contains no provision
475 (327) for recovery of plan payments.

Senate amendment.—The Corporation is, in general, given the authority to recover all a terminated plan's benefit payment begun within three years prior to termination if the plan affects interstate commerce. The amount recoverable is reduced by the amount the plan participant would have received under an annuity commencing at 65 and by the amount of his insured benefits (reduced by his pro rata share of his company's liability to the Corporation for the insurance
476 (328) losses).

Payments subject to recovery are not to include those made on account of death or disability. The Corporation may waive recovery of certain amounts if recovery would cause substantial hardship to the participant or his beneficiary.

In the event of a distribution to an owner-employee that exceeds $10,000 and creates or increases unfunded vested liabilities, the three-year lookback period would not begin until the Corporation is informed of the distribution (which is a reportable event).

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Staff comment.—The conferees may wish to provide for recapture of any aggregate of $10,000 distributed to a plan participant in any 12-month period in the three years preceding termination, except distributions made under life annuities.

Payments subject to recovery are not to include those made on account of death or disability. The Corporation may waive recovery of certain amounts if recovery would cause substantial hardship to the participant or his beneficiary.

21. Liability on Withdrawal of Substantial Employers in Multiemployer Plan

House bill.—Since employees in multiemployer plans are not liable for the Corporation's losses under the House bill, there is no provision similar to the Senate amendment provision fixing liabilities to substantial employers in multiemployer plans caused by insurance losses to the Corporation. 143 (324)

Senate amendment.—The plan administrator of a multiemployer plan is required to inform the Corporation of the withdrawal of a substantial employer in the multiemployer plan within 60 days. (A substantial owner is defined as one who for two consecutive years has contributed at least 10 percent of employer contributions to a multiemployer plan and who, following the required notification by the plan administrator as to his status as a substantial owner, does not withdraw from the plan within two years.) Following its notification, the Corporation has two alternative procedures available. 482 (330)

In one of these, the substantial employer must pay or deposit a bond in the amount of his potential liability. His potential liability is computed as the share (with the share determined according to that employer's proportion of the total employer contributions to the plan within the past five years) of the total plan liability that would have existed if the plan had terminated when that employer withdrew from it. If the substantial employer desposits a bond, the Corporation may require the bond to be up to 150 percent of this potential liability. 483 (331)

If the plan terminates within five years, the payment or bond is forfeited for the benefit of the plan. If there is no termination, the payment or bond is to be returned to the substantial employer or cancelled. 484 (332)

Alternatively, the Corporation may, if the withdrawal causes a significant reduction in the amount of plan contributions, require the plan fund to be allocated between those participants no longer under the plan because of the withdrawal and those participants still covered. That portion of the fund allocable 484 (333)

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to participants no longer in the plan is to be treated as a termination, while the remainder is to be a new plan.

485 (334) The Corporation is entitled to waive the use of either of these procedures if there is an indemnity agreement between all the other employers in the plan sufficient to satisfy all plan liabilities.

441 A multiemployer plan is a plan established or maintained under a collective bargaining agreement if benefits are payable for any participant regardless of whether that particular participant's employer ceases to make plan contributions and if the contributions of any one employer are less than 50 percent of the total in any one plan year.

Staff comment.—The conferees may wish to adopt the Senate provision in general, but to provide that the Corporation may choose a method in addition to the posting of a bond to assure satisfaction of liability of a withdrawing substantial employer. Presumably, the conferees would wish to have the same definition of multiemployer plan applied for termination insurance as they have agreed to with regard to participation, vesting, and funding.

22. Transitional Rule

131 (292) *House bill.*—If a plan has been in existence less than 5 years as of its termination, what would otherwise be the maximum insurance payments to its participants is to be phased in until the five-year age is reached. The percentage payable is to be 20 percent in the case of a plan less than 2 years of age, 40 percent for a plan less than 3 years of age, and so on to 100 percent after 5 years of existence.

Senate amendment.—No corresponding phase-in provision.

Staff comment.—Some suggest that the benefit coverage of plans already in existence as of enactment should be phased in at 20 percent per year; with a minimum benefit initially set at $20 per month and increasing each year by $20 per month until the total plan benefits, up to the insurance limitations, are covered after 5 years. Others maintain that these benefits should be phased in equally over 3 years, with a basic minimum of $30 monthly. Yet another position is that 50 percent of the benefits should be covered immediately, with the rest phased in at 10 percent per year for the next 5 years, but that the minimum payment should be the lesser of the benefit due under the plan or $100 monthly (up to the insurance limitations).

23. Effective Dates

144 (340) *House bill.*—The provisions regarding premiums and benefits payable apply to plan years beginning

after June 1, 1974, for single employer plans. In the case of a multiemployer plan involving a collective bargaining agreement covering more than 25 percent of the total participants, these provisions apply to plan years beginning after the earlier of December 31, 1980, or the date on which the last such agreement relating to that plan terminates (without regard to extensions made after the date of enactment of the Act).

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Provisions other than those regarding premiums and benefits payable take effect on the date of enactment of the Act.

Senate amendment.—Premiums are to be collectible with respect to plan years and taxable years beginning after December 31, 1973. The provisions regarding terminations and Corporation and employer liability apply to plan years beginning after December 31, 1976, unless the Corporation determines it has sufficient funds to cover earlier terminations. 493 (340)

The remaining provisions take effect as of the date of enactment of the Act.

Staff comment.—The conferees may wish to provide that the provisions regarding premiums and benefits payable in single-employer plans are to apply to plan years beginning after December 31, 1974.*

As to multiemployer plans, some propose that the effective date should be the same as for single-employer plans. Others suggest the provisions should be applicable to plan years of multiemployer plans beginning after December 31, 1975, while still others maintain that this should be varied to provide that the effective date for multiemployer plans covered by collective bargaining agreements covering more than 25 percent of the total participants should be the earlier of the first day of plan years beginning after December 31, 1978, or the date on which the last collective bargaining agreement relating to that plan terminates.*

24. Special Distribution and Merger Requirements

House bill.—Title I includes the following requirements dealing with distribution and merger of plans: 110 (248)

(1) Where plans merge, the adequacy of the participants' protection (both as to value of benefits and the extent to which the benefits have not yet been funded) is to be tested by determining what would have been the participants' benefits if (a) the plans had terminated just before the merger and (b) the merged plan had terminated just after the merger. Each participant's hypothetical post-merger termination benefit must not be less than that participant's hypothetical pre-merger termination benefit.

(2) A pension plan cannot make a lump-sum distribution to a participant or beneficiary if the distri-

*The staff is not in complete agreement on this point.

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bution would exceed the termination benefit that would be received if the plan terminated on the date of distribution.

(3) There can be no merger, consolidation, transfer of assets or liabilities, or distribution of assets to any participant in any year of more than $25,000, unless the plan administrator files an actuarial statement of valuation that shows compliance with the requirements of the Act at least 30 days prior to the merger, etc.

Title II includes the following provisions:

238 (A–108) (1) Where plans merger, the adequacy of the participants' protection (both as to value of benefits and the extent (if any) to which the benefits have not yet been funded) is to be tested by determining what would have been the participants' benefits if (a) the plans had terminated just before the merger and (b) the merged plan had terminated just after the merger. Each participant's hypothetical post-merger termination benefit must not be less than that participant's hypothetical pre-merger termination benefit. This rule is to apply to mergers occurring after October 22, 1973.

(2) No comparable provision.

(3) No merger, consolidation, or transfer of assets or liabilities may occur without an actuarial statement showing compliance with the bill being filed with the Secretary of the Treasury at least 30 days before the merger, etc.

Senate amendment.—The Senate amendment contains no comparable provision.

Staff comment.—

(1) The conferees may wish to consider agreeing to the rule of the title II provision, except that the effective date would be the date of enactment.

(2) The conferees may wish to eliminate this provision regarding lump sump distributions.

(3) The conferees may wish to consider providing that there can be no merger, consolidation, or transfer of assets or liabilities, unless the plan administrator files an actuarial statement of valuation that shows compliance with the requirements of the Act at least 30 days prior to the merger, etc.

REPORTING AND DISCLOSURE—LABOR DEPARTMENT

1. Coverage

21 (51) *House bill.*[1]—The reporting and disclosure provisions cover all employee benefit plans established or maintained:

(1) by employers engaged in or affecting interstate; and

[1] The reporting and disclosure provisions with respect to the Labor Department appear only in title I of the House bill.

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(2) by employee organizations representing employees engaged in or affecting interstate commerce.

Senate amendment.— 502 (51)

(1), (2) Substantially the same as the House bill.

Staff comment.—The provisions are substantially the same.

2. Exemptions from Coverage 21 (51)

House bill.—The reporting and disclosure provisions do not apply to:

(1) governmental plans (including Railroad Retirement Act plans financed by contributions required under that Act);

(2) church plans which have not elected to be covered by the new vesting, etc., rules;

(3) workmen's compensation and unemployment compensation disability insurance plans;

(4) non-U.S. plans primarily for nonresident aliens; and

(5) unfunded plans primarily providing deferred compensation for management or highly compensated employees.

Senate amendment.—The reporting and disclosure provisions do not apply to: 502, 534 (51)

(1) governmental plans; however, under the Senate amendment "governmental plan" does not include railroad retirement plans;

(2) plans of religious organizations that are tax-exempt under section 501(a) of the Internal Revenue Code;

(3) same as House bill;

(4) non-U.S. plans primarily for non-resident aliens if the situs of a plan's fund is outside the United States;

(5) no similar provision.

Staff comment.—

(1) Governmental plans: the conferees may wish to adopt the rules of the House bill.

(2) Church plans: the conferees may wish to adopt the rules of the House bill.

(3) Workmen's compensation plans: same in both bills.

(4) Non-U.S. plans: the conferees may wish to adopt the rule of the House bill, but additionally require that, for a plan to be excluded, substantially all of the participants and beneficaries of a plan must be nonresident aliens.

(5) Management plans: the conferees may wish to adopt the rules of the House bill. In addition, conferees may wish to exclude unfunded plans which provide benefits in excess of the limitations on contributions and benefits which may be adopted in the Internal Revenue Code, and which are plans for the highly-paid.

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38 (89) *3. Exemption from Annual Reporting Requirements*

House bill.—

(1) Plans with fewer than 26 participants are exempt from the annual reporting requirements.

(2) The Secretary of Labor may exempt pension plans with fewer than 100 participants from the annual reporting requirements.

(3) The Secretary of Labor may exempt any class or type of welfare plan from all or part of the reporting, disclosure, and publication requirements.

(89) 503 *Senate amendment.*—

(1) No comparable provision.

(2) (a) The Secretary of Labor is to prescribe simplified reports for plans which cover less than 100 participants and maintain an employee benefit fund with less than $100,000 in assets.

(b) The Secretary of Labor may exempt any class or type of employee benefit plan from the reporting, disclosure, and publication requirements. Exemptions must be necessary or appropriate and consistent with the purposes of the Act.

(3) Same as the House bill (as part of the general exemption power, item (2) (b) above).

Staff comment.—With respect to pension plans, the conferees may wish to adopt the following compromise between the Senate and the House provisions:

(a) Generally, all plans would be covered (including plans with less than 26 participants). Simplified reports would be required for plans with fewer than 100 participants.

(b) However, the Secretary of Labor may waive the reporting and disclosure requirements for plans with fewer than 100 participants.

(c) In the case of plans involving fewer than 100 participants, the Secretary of Labor may prescribe different kinds of simplified reports for different types of plans and may waive the reporting requirements on a case-by-case basis or on a class basis.

(d) The Secretary of Labor may not waive the requirement that participants be given statements of their rights and benefits.

With respect to welfare plans, the conferees may wish to follow both the House and Senate rules and provide that the Secretary of Labor may exempt any class or type of plan from all or part of the reporting, disclosure, and publication requirements, and may provide simplified returns for them.

4. Variation of Contents of Reporting and Disclosure Requirements.

House bill.—No comparable provision.

503 (89) *Senate amendment.*—The Secretary of Labor may, by regulation, provide a variation in the form or

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manner of reporting, disclosure, and publication required if the variation is necessary or appropriate and consistent with the purposes of the Act.

Staff comment.—The conferees may wish to adopt the following:

(a) With respect to pension plans, the Secretary of Labor could grant variations, but not eliminate reporting requirements with respect to "line item transactions.", and in the case of pooled funds, he may not eliminate reporting but he could provide for reporting on an aggregate basis.

(b) With respect to welfare plans, the Secretary of Labor would have unlimited variation authority.

5. Special Terminal Reports

House bill.—

(1) Special terminal reports are required for pension plans that are winding up their affairs; terminal reports may be required by the Secretary of Labor for welfare plans. 22, 38 (57)

(2) In addition, in the year a plan is terminated, the Secretary of Labor may require supplementary information to be filed with the annual report.

Senate amendment.—

(1), (2) Substantially the same as the House bill. 503 (57)

(3) Additionally, a special terminal report is to be made for any period during which the plan had assets and for 150 days thereafter.

Staff comment.—The conferees may wish to adopt the rules of the House bill.

6. Plan Description—Contents 23 (61)

House bill.—

(1) Plan descriptions are to be comprehensive and written so they are understandable by average plan participants.

(2) Descriptions are to include the plan name and type of plan administration, the names and addresses of plan administrators and trustees, and a description of relevant collective bargaining agreements.

(3) Plan descriptions also are to include the plan participation and benefit requirements, benefit schedule, vesting provisions, funding source, plan year, procedures for claiming benefits, and remedies available under the plan where benefits are denied.

Senate amendment.— 504 (61)

(1), (2), and (3) Substantially the same as the House bill, with some minor differences.

Staff comment.—The conferees may wish to agree to the rules of the House. In addition, the conferees may wish to adopt a compromise combining the plan description and a summary of major provisions (Item 7 below) as described below.

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7. Summary of Major Provisions—Contents

House bill.—No comparable provision.

516 (63)

Senate amendment.—The plan summary is to include important plan provisions, names and addresses of persons responsible for plan investment or management, a description of benefits, the circumstances that may result in disqualification or ineligibility, and requirements of the Welfare and Pension Plans Disclosure Act regarding the availability of plan documents.

Staff comment.—The conferees may wish to adopt the following compromise that would combine the plan description (Item 6) and plan summary:

(a) A booklet would be provided to all plan participants. The booklet would include two parts: (i) a comprehensive detailed plan description, and (ii) a reasonably comprehensive plan summary written so it is understandable by average plan participants.

(b) The conditions that would disqualify a person from receiving benefits from a plan would be included both in the plan summary and the plan description that would be in the booklet given to participants.

(c) The booklet would be filed with the Secretary of Labor by each plan subject to the Act. The Secretary would establish format guidelines for the booklet. The booklet could be used unless the Secretary rejected it.

(d) In addition, the Secretary of Labor is to require each plan to file a plan description on prescribed forms. (Simplified forms would be required for small plans, consistent with Item 3 above.)

8. Annual Report—Independent Accountant and Financial Audit

House bill.—

24 (69)

(1) Plan administrators are to engage, on behalf of plan participants, an independent qualified public accountant to examine plan financial statements and form an opinion as to whether the financial statements fairly conform with generally accepted accounting principles.

(2) The accountant is to conduct his examination in accordance with generally accepted auditing standards.

(3) He is to report whether certain supplementary financial data present information fairly in all material respects.

(4) the accountant's opinion is to be made part of the annual report.

(5) The accountant's opinion is not required for statements prepared by a bank or similar institution or insurance carrier if the statements are certified by the bank, etc., and are made part of the annual report.

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(6) The bill defines qualified public accountant as including:

(a) certified public accountants,

(b) licensed public accountants,

(c) other persons who meet standards of education and experience prescribed by the Secretary of Labor in regulations,

(d) in addition, the Secretary may prescribe by regulation higher standards for qualification.

Senate amendment— 506

(1) Plan administrators are to have the plan audited annually. (69)

(2) The audit is to be in accord with regulations issued by the Secretary of Labor and in accordance with generally accepted standards of auditing.

(3) No comparable provision.

(4) The auditor's opinion is to form a part of the annual report.

(5) An audit is not to be required of the records of a bank, insurance company, or other institution providing insurance, investment, or related functions for the plan if the records are subject to periodic examinations by Federal or State agencies.

(6) No comparable provision.

Staff comment.—The conferees may wish to adopt the House provisions with the following changes:

(a) To the extent a plan is not required to make an annual report, an annual audit would not be required. Thus, if the annual report requirement was waived (see Item 3 above), the audit would not be required.

(b) With respect to plans that report on simplified forms (see Item 3 above), the Secretary of Labor may waive the requirement of an annual audit.

(c) (i) An audit would not be required of a bank, insurance company, or other institution providing insurance, investment, or other related functions for the plan if the records are subject to periodic examination by State or Federal agencies, to the extent the transactions in question are certified by the financial institution.

(ii) Where a bank, etc., performs functions for the plan and certifies records or transactions to the plan, this certification must occur within 120 days after the end of the plan year.

(d) With respect to reporting on forms, see Item 23, below.

(e) The provisions of the House bill which define qualified public accountant would be followed, except that, with respect to point (6) (c) of the House bill, Secretary of Labor would be authorized to prescribe standards only for persons who practice in States where there is no certification or licensing procedure for accountants.

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9. Annual Report—Enrolled Actuary and Actuarial Opinion

House bill.—

27 (72) (1) Plan administrators are to engage, on behalf of plan participants, enrolled actuaries to supervise the preparation of the required actuarial statement. (For more detail with respect to the actuarial statement, see Item 18 below.)

(2) The actuary is to form an opinion as to whether the contents of the actuarial statement are reasonably related to the experience of the plan and to reasonable expectations.

(3) The actuary is to use assumptions which, in combination, offer his single best estimate of anticipated experience under this plan.

(4) The actuary's opinion and the actuarial statement are to be part of the annual report.

Senate amendment.—

513, 565 (72, 82) (1) and (4) An actuarial report is to be included with the annual report filed with the Secretary of Labor.

(2) and (3) No comparable provision with respect to reports to the Secretary of Labor. However, the actuarial report provided the Secretary of the Treasury must include a statement that to the best of the actuary's knowledge the report is complete and accurate, and the actuary must give his opinion regarding the reasonableness of this funding method and actuarial assumptions used to determine the normal costs of the plan.

Staff comment.—

(1) and (4) [The conferees may wish to follow the House bill.]

(2) and (3) See Funding, Item 12, in Part One.

10. Annual Report—Contents of Financial Statement in General

29 (74) *House bill.*—Financial statements are to be included in the annual report for welfare plans and pension plans.

With respect to welfare plans:

(1) The statement is to include plan assets and liabilities, revenues and expenses (by general sources and applications), changes in fund balance, and changes in financial position.

(2) The accountant is to consider disclosures in the notes to the financial statement with respect to the following: plan description and changes in the plan, material lease commitments, contingent liabilities, agreements and transactions with persons known to be parties-in-interest, tax rulings, and generally any other matters necessary to fairly present the financial statements of the plan.

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With respect to pension plans:

(3) The statement is to include plan assets and liabilities (including the estimated present value of accrued benefits to be paid), and changes in net assets (including details of revenues and expenses by general source and application).

(4) The accountant is to consider certain items with respect to the notes to the financial statement. These items are substantially the same as with welfare plans, but also include consideration of the funding policy, plan valuation date, and actuarial methods and assumptions.

With respect to both pension and welfare plans, the report also is to include:

(5) Plan assets and liabilities by categories, valued at current value, and

(6) Receipts and disbursements by general sources and applications.

Senate amendment.—The Senate amendment does not distinguish between reports required for welfare plans and pension plans. The annual report for covered plans is to include: 507 (75)

(1), (3), (5), and (6) A statement of assets and liabilities, receipts and disbursements, and amounts contributed by the employer and the employees, and the amount of benefits paid.

(2), (4) No comparable provisions.

In addition, under the Senate amendment the report is to include:

(7) The number of employees covered.

(8) A detailed statement of salaries, fees, and commissions charged to the plan (to whom paid, amounts, purposes), the name, address, and position of each plan fiduciary (and any relationship he has to the employer or employee organization and any position he has with a party-in-interest).

Staff comment.—(a) The conferees may wish to adopt the provisions of the House bill, adding any requirements of the Senate amendment which are not included in the House bill, and specifically provide that employer contributions are to be included in the report. (With respect to reporting to the Secretary of Labor on forms, see Item 23, *Staff Comment.*)

(b) In certifying, the accountant is to be permitted to rely on the correctness of any actuarial matter certified to by an enrolled actuary; where the accountant does so rely, he is to state his reliance.

11. Annual Report—Assets Held for Investment

House bill.—The annual report is to include: 31 (77)

(1) A schedule of all assets held for investment, aggregated and identified by issuer, borrower, lessor or

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similar party, maturity date, rate of interest, collateral, par or maturity value, cost and current value.

Senate amendment.—The annual report is to include:

507 (75) (1) A schedule of all plan investments:

(a) with respect to securities, the schedule is to show the aggregate cost and value of the security by issuer;

(b) with respect to other investments, the schedule is to show aggregate cost and value by type or category and is to separately identify each investment which is more than 3 percent of the total, and each investment in property (including securities) of any person known to be a party-in-interest.

(2) (a) A schedule of purchases, sales, exchanges, etc., of securities with a list of issuers. Where the issuer is known to be a party-in-interest, additional detail is to be provided (quantity, price, proceeds, gain or loss, etc.).

(b) With respect to assets other than securities, a schedule of the aggregate amount of purchases, sales, etc., is also required.

Staff comment.—The House and Senate provisions are similar, and the conferees may wish to combine the provisions of both.

12. Reporting—Transactions With Parties-In-Interest

House bill.—

31 (77) (1) The annual report is to include a schedule of each transaction involving a person known to be a party-in-interest.

(2) The schedule is to include the person's identity in relation to the plan, the asset involved, price (or rental or interest rate and maturity date), expenses incurred in the transaction, asset costs and current value, and gain or loss on the transaction.

508 (77, 78, 79) *Senate amendment.*—

(1) Similar to the House bill.

(2) Similar to the House bill. In addition, special rules are provided with respect to transactions with parties-in-interest involving specific types of transactions.

(a) With respect to a transaction involving a security issued by a party-in-interest, the report is to include the issuer, type of security, quantity, gross purchase price, gross and net proceeds, and net gain or loss with respect to the transaction.

(b) With respect to loans and leases, the type

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of reporting required with respect to party-in-interest transactions is the same as that described below for loans and for leases in default (Items 13 and 14).

Staff comment.—The conferees may wish to merge the requirements of the House and Senate provisions.

13. Annual Report—Loans

House bill.— 32 (78)

(1) A report is required with respect to all loans in default at the end of the plan year or which were classified as uncollectible during the year.

(2) The report is to include the original principal amount, the amount of principal and interest received during the year, the unpaid balance, identity of the obligor, a detailed description of the loan (when made, maturity date, interest date, collateral, material terms), the amount overdue, etc.

Senate amendment.— 509 (78)

(1), (2) Substantially the same as the House bill.

(3) Additionally, this information is required for loans:

(a) that exceed 3 percent of the value of the fund, or

(b) are made to parties-in-interest.

Staff comment.—The conferees may wish to merge the two provisions, and include the requirements with respect to loans that exceed 3 percent of the value of the fund and loans to parties-in-interest. The conferees may wish to clarify that these reporting requirements apply to transactions normally considered as "loans" and not to transactions involving what is normally considered a "security."

14. Annual Report—Leases 32 (78)

House bill.—

(1) The annual report is to include a list of all leases which were in default or which were classified during the year as uncollectible.

(2) The report is to include the type and location of the property, the identity of the lessor and the lessee and their relationship to the plan, the terms of the lease (rent, taxes, insurance, etc.), the gross rent received and expenses paid, the net receipts, when the property was acquired and its costs, the amount in arrears, etc.

Senate amendment.— 510 (78)

(1), (2) Substantially the same as the House bill. This information is also required for leases with parties-in-interest.

Staff comment.—The provisions are quite similar, and the conferees may wish to merge the two provisions.

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15. Annual Report—Large Transactions

34 (80) *House bill.*—

(1) The annual report is to include a schedule of each transaction (or the aggregate of multiple transactions with one person during the year) that exceeds 3 percent of the value of the fund or $300,000, if less.

(2) The schedule is to include the name of the person involved, a description of the assets, purchase or selling price (or rental, or interest rate and maturity), expenses incurred, asset cost and current value, net gain or loss, etc.

509 (77) *Senate amendment.*

(1) The annual report is to include a schedule for each transaction involving over 3 percent of the value of the fund.

(2) Substantially the same as the House bill.

Staff comment.—The conferees may wish to require this report only for transactions that exceed 3 percent of the value of the fund. Otherwise, the conferees may wish to merge the two provisions.

16. Annual Report—Common Trust

33 (79) *House bill.*—If plan assets are held in a common trust maintained by a bank, etc., in a separate account maintained by an insurance company, or in a separate trust maintained by a banker-trustee, the annual report is to include a statement of assets and liabilities of the trust or account and other information needed by the plan administrator to comply with the annual report requirements.

Senate amendment.—Similar to the House bill.

512 (86) *Staff comment.*—The provisions are substantially the same.

17. Annual Report—Persons Employed by the Plan

34 (81) *House bill.*—The annual report is to include:

(1) the name and address of each fiduciary;

(2) the name of each person who received more than $5,000 in compensation from the plan for services rendered, along with the amount of compensation, the nature of services, relationship to the employer, etc.;

(3) the reasons for any change in trustee, accountant, actuary, investment manager, administrator, etc.

507 (81) *Senate amendment.*—

(1) and (2) Similar to the House bill, except the Senate amendment requires a report with respect to each person who received fees, etc., from the plan and is not limited to persons who received more than $5,000.

(3) No comparable provision.

Staff comment.—

(1) and (2) The conferees may wish to require a report with respect to each person who received com-

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pensation from the plan, but allow the Secretary of Labor to establish exemptions by regulation in the case of minimal amounts.

(3) The conferees may wish to adopt the rule of the House bill.

18. Annual Report—Actuarial Report

House bill.— 35

(1) The annual report is to include an actuarial statement for all pension plans which are subject to the vesting or funding requirements of title I. (82)

(2) The actuarial statement is to include

(a) the actuarial report, the minimum contribution, normal cost, accrued liabilities, present value of vested benefits, value of assets, etc.;

(b) the annual contribution to the plan, the number of plan participants and beneficiaries, and vested benefits allocated by termination priority categories; and

(c) the value of plan assets (and an explanation of the basis of valuation), the ratio of the current value of assets to liabilities (with both assets and liabilities being allocated to termination priority categories), etc.

Senate amendment.— 513

(1) The annual report is to include an actuarial report. (82)

(2) The actuarial report is to include actuarial assumptions and an explanation of changes therein, the present value of vested liabilities, the value of accrued liabilities and the ratio of market value of reserves and assets to liabilities. It also is to include the type and basis of funding.

Staff comment.—The conferees may wish to adopt the provision of the House bill, and also include any Senate amendment provisions which are not in the House bill.

With respect to reporting on forms, see Item 23.

19. Annual Report—Insured Plans 24, 37

House bill.— (68, 86)

(1) If plan benefits are purchased from and guaranteed by an insurance company, the report is to include the premiums paid, benefits paid, charges for administrative expenses, commissions (and who is paid them) and the amount held to pay future benefits.

(2) If benefits are provided by an insurance carrier or other organization, the carrier, etc., is to certify to the plan administrator the information he needs to comply with the reporting, etc., requirements within 180 days after the plan year.

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506 (86) *Senate amendment.*—

(1), (2) Similar to the House bill (see also section 7(d) of the Welfare and Pension Plan Disclosure Act).

Staff comment.—The conferees may wish to merge the House and Senate provisions and the provisions of present law.

20. Annual Report—Pay-As-You-Go Plans

38 (87) *House bill.*—If the only assets available for paying claims are the general assets of the employer or the employee organization, the report is to include the benefits paid and the average number of employees eligible for participation, for the previous five years.

512 (87) *Senate amendment.*—Same as the House provisions.

Staff comment.—The provisions are the same.

21. Annual Report and Plan Description—Filing

38 (89) *House bill.*—

(1) Annual reports and plan descriptions are to be filed with the Secretary of Labor within 270 days after the plan year.

(2) The descriptions and reports are to be made available for public inspection.

Senate amendment.—

504, 515 (60, 89) (1) The annual report is to be filed with the Secretary of Labor within 150 days after the plan year (as under present law). Plan descriptions are to be filed within 90 days after the plan is established or when the plan becomes subject to this requirement.

(2) Same as House bill.

(3) Any other documents relating to the plan are to be furnished upon request to the Secretary of Labor.

Staff comment.—

(1) The conferees may wish to require that annual reports be filed within 210 days after the plan year.

(2) Same in both bills.

(3) The conferees may wish to adopt the rule of the Senate amendment.

22. Annual Report—Rejection of Filing

House bill.—

39 (91) (1) After notice and hearing, the Secretary of Labor may reject a filing if he finds that it is incomplete or if there is a material qualification in the accountant's or actuary's opinion.

(2) If a revised report is not submitted within 45 days after rejection, the Secretary of Labor may retain an accountant to perform an audit, retain an actuary to make an actuarial report, or bring a civil action for legal or equitable relief.

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(3) The plan is to be liable for any expenses of such an audit or report.

Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to adopt the provisions of the House bill. However, the conferees may wish to provide that the filing may be rejected through administrative action by the Secretary of Labor, without the need of holding a hearing governed by the Administrative Procedure Act. A rejection of a filing by the Secretary would be subject to judicial review, however.

23. Annual Report—Forms

House bill.—The House bill eliminates the provision in present law authorizing the Secretary of Labor to prescribe forms for annual reports and to make these forms available to plan administrators (sec. 5(b) of the Welfare and Pension Plan Disclosure Act). Generally, forms are not to be required for annual reports under the House bill.

Senate amendment.—The Senate amendment retains the provisions of existing law authorizing the Secretary to prescribe and make available forms for plan descriptions and annual reports.

Staff comment.—The conferees may wish to adopt the following: *

(1) The Secretary of Labor would not prescribe forms for the booklet to be given to plan participants, annual financial statement, and annual actuarial reports. However, the Secretary of Labor would be able to regulate the format of these documents.

(2) The Secretary of Labor could prescribe forms for all other parts of the annual report. In addition, the Secretary could require that some or all of the information which is to be included in the plan booklet, annual financial report, and annual actuarial report be reported on prescribed forms.

24. Disclosure to Participants—Booklets Containing Plan Description, on Establishing a Plan

House bill.—Plan descriptions are to be furnished to participants within 120 days after the plan is established or after it becomes subject to the bill, if later. 23 (60)

Senate amendment.—Plan descriptions are to be published to participants within 90 days after the plan is established or becomes subject to the bill. 504 (60)

Staff comment.—The conferees may wish to adopt the provisions of the House bill and apply them to the plan booklet described in Item 7, *Staff Comment.*

*There was not complete staff agreement on this point.

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25. Disclosure to Participants—Booklets Containing Plan Description and Summary

40 (93) *House bill.*—

(1) Plan descriptions are to be provided plan participants within 30 days after they begin covered employment, 90 days for multiemployer plans.

(2) All participants also are to receive plan descriptions at least once every 5 years.

(3) Descriptions of material changes are to be furnished each participant within 1 year after the change takes effect.

515 (93) *Senate amendment.*—

(1), (2), (3) The plan description is to be available for examination by plan participants and beneficiaries in the principal office of the plan administrator. Additionally, plan descriptions are to be furnished to plan participants or beneficiaries upon written request.

(4) The administrator also is to furnish or make available (whichever is most practicable) a summary of the plan's important provisions (see Item 7, above). A summary is to be available (a) upon enrollment in the plan, (b) every 3 years, and (c) within 120 days after each major amendment.

Staff comment.—If the conferees decide to adopt the compromise suggested by the staff with respect to the booklet (see *Staff comment* Item 7), they may also wish to adopt the following rules with respect to disclosure to participants:

(a) Plan booklets are to be provided within 90 days after the individual becomes a participant.

(b) Plan booklets should be received by participants every 5 years.

(c) However, participants would receive descriptions of material changes in the plan within 210 days after the end of the plan year in which the amendments occur.

26. Disclosure to Participants—Annual Reports, etc.

41 (93) *House bill.*—

(1) The annual report (and plan documents) is to be made available for examination by the plan participants or beneficiaries at the principal office of the plan administrator and such other places as is necessary to fully disclose all pertinent facts.

(2) Each participant is to be furnished a copy of the statement of plan assets and liabilities, and receipts and disbursements contained in the annual report.

(3) Each participant also is to be furnished a copy of the statement of the value of the plan assets, the plan liabilities, and the ratio of assets and liabilities allocated to termination priority categories. (These also are included in the annual report.)

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(4) Other material necessary to fairly summarize the latest report also must be furnished.

(5) This information must be furnished within 270 days after the plan year.

(6) On written request, the administrator is to furnish participants and beneficiaries a complete copy of the latest annual report and other instruments under which the plan is established and operated. A reasonable charge may be made.

Senate amendment.—

(1) The annual report and the governing instrument of the plan is to be available for inspection in the principal office of the plan administrator. 516 (93)

(2), (3), (4), (5) No comparable provisions.

(6) On written request a fair summary of the annual report is to be furnished participants or beneficiaries. They also are to be furnished with a complete annual report and plan documents on written request.

Staff comment.—The conferees may wish to adopt the rules of the House bill, except that with respect to point (5), the information would be furnished within 210 days.

27. Reporting and Disclosure of Participant's Benefit Rights

House bill.—Points (1), (2), (3), and (4) of this provision appear both in title I and title II.[1] Point (5) appears only in title I. 22, 42, 259 (58, 96)

(1) Under title I, each plan which must file an annual report with the Secretary of Labor is to file an annual statement regarding individuals who have terminated employment in the year in question and who have a right to a deferred vested benefit in the plan. Under title II, a similar report also is to be filed with the Internal Revenue Service.

(2) The plan administrator also is to furnish each person an individual statement giving him the same information which is reported to the Government.

(3) The Social Security Administration is to maintain records of the retirement plans in which individuals have vested benefits, and is to provide this information to participants and beneficiaries on their request and also on their application for Social Security benefits.

(4) The provisions governing registration with Social Security are to apply to a multiemployer plan only to the extent provided in regulations.

(5) The Secretary of Labor also may, by regulation, require that participants or surviving beneficiaries be furnished a statement of vested rights.

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[1] Points (1) through (4) of this provision are also described in Portability, Item 3, in Part One.

Page numbers

Senate amendment.—

360, 517 (96) (1), (2), (3), and (4) Substantially the same as the House bill, except that reports are to be filed only with the Secretary of Treasury.

(5) The plan administrator must furnish a participant or beneficiary requesting in writing a statement of whether he has a vested right to the pension benefit, the vested benefits which have accrued or the earliest date on which benefits will become vested, and the total pension benefits accrued.

Staff comment.—

(1), (2), (3), and (4) See Part One, Portability, Item 3, *Staff Comment.*

(5) The conferees may wish to adopt the rules of the Senate amendment, subject to regulations of the Secretary of Labor.

28. Descriptions and Reports as Public Information

45 (99) *House bill.—*

(1) Descriptions and reports filed with the Secretary of Labor are to be public information available for inspection.

(2) However, information with respect to individuals that is reported to the Social Security Administration is to be disclosed only to the extent allowed under the Social Security Act.

(3) The Secretary of Labor may use the information received for research and may publish studies, etc., as he deems appropriate.

519 (99) *Senate amendment.—*

(1) Substantially the same as the House bill.

(2) No comparable provision. (However, under the Senate amendment reports to Social Security are not filed with the Secretary of Labor but are filed with the Secretary of the Treasury.)

(3) The Secretary of Labor is to develop a comprehensive program of collecting and analyzing information on employee benefit plans.

Staff comment.—

(1), (2) The conferees may wish to adopt the rules of the House bill.

(3) The conferees may wish to adopt the rule of the Senate bill, merging it with appropriate provisions of the House bill.

29. Retention of Records

46 (100) *House bill.—*

(1) Persons subject to the filing requirements are to retain records which provide the basic information from which filed documents may be verified.

(2) These records are to be retained for 6 years after filing or for 6 years after the date on which the documents would have been filed but for exemptions.

Senate amendment. — No comparable provision. (However, sec. 11 of the Welfare and Pension Plan Disclosure Act has a similar provision requiring record retention for 5 years.)

Staff comment.—The conferees may wish to adopt the 6-year retention rule of the House bill. (This would conform with the *Staff comment* with respect to the statute of limitations in Fiduciary Responsibility, item 12.)

30. Effective Dates

House bill.—The reporting and disclosure provisions are to go into effect 6 months after enactment. 73 (145)

Senate amendment.—The reporting and disclosure provisions are to go into effect on January 1, 1974. 537 (145)

Staff comment.—The conferees may wish to provide that the reporting and disclosure provisions are to go into effect for plan years beginning after December 31, 1974. In addition, the conferees may wish to provide that the provisions of the existing Welfare and Pension Plan Disclosure Act are to govern for prior plan years.

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[COMMITTEE PRINT]

SUMMARY OF DIFFERENCES BETWEEN THE SENATE VERSION AND THE HOUSE VERSION OF H.R. 2

TO PROVIDE FOR PENSION REFORM

PREPARED FOR THE USE OF

THE HOUSE AND SENATE CONFEREES ON H.R. 2

PART THREE

FIDUCIARY AND ENFORCEMENT

JUNE 12, 1974

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FIDUCIARY RESPONSIBILITY

Page number †

1. Plans Subject to the Provisions

House bill.[1]—The fiduciary responsibility rules apply to all employee benefit plans established or maintained by: 21 (51)

(1) employers engaged in or affecting interstate commerce, and

(2) employee organizations representing employees engaged in or affecting interstate commerce.

Senate amendment.—The Senate amendment provides fiduciary responsibility rules under the Welfare and Pension Plans Disclosure Act and under the Internal Revenue Code. 525, 540 (51)

(1), (2) The amendments to the Welfare and Pension Plans Disclosure Act (hereafter referred to as "Labor Act" amendments) apply to the same plans as do the rules of title I of the House bill.

(3) The Internal Revenue Code amendments (hereafter referred to as "Revenue Code" amendments) cover qualified plans, annuities, and individual retirement accounts which are tax-exempt (under sec. 501(a) of the Code) or have at any time been determined to be tax-exempt.

Staff comment.—See Part One (page 47), Staff Comments Relating To Jurisdictional Matters, *Operational Stage Jurisdiction*, points (6) and (7).

2. Exceptions From Coverage

House bill.—The fiduciary provisions do not apply to: 21 (51)

(1) governmental plans (including railroad retirement plans);

(2) church plans which have not elected to be covered by the new vesting, etc., rules;

(3) workmen's compensation or unemployment compensation disability insurance plans;

(4) non-U.S. plans primarily for nonresident aliens; and

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†"Page numbers" outside paretheses are the numbers of the relevant pages in the print of H.R. 2 dated March 4, 1974. The first 353 pages of that print, in linetype, represent the bill as passed by the House of Representatives; the remaining pages of that print, in italic type, consitute the Senate amendment.

"Page numbers" inside parentheses are the numbers of the relevant pages in the comparative prints prepared by the staffs.

[1] The House bill provisions on fiduciary responsibility discussed in this portion of the summary are those of title I only. Title II does not deal with fiduciary responsibility as such.

(5) unfunded plans providing deferred compensation for management or highly compensated employees.

502, 534 (51) *Senate amendment.*—The Labor Act amendments do not apply to:

(1) governmental plans (however, the term "governmental plan" does not include railroad retirement plans);

(2) plans administered by a tax-exempt religious organization;[2]

(3) workmen's compensation plans: same as the House bill;

(4) non-U.S. plans for nonresident aliens where the situs of the plan fund is maintained outside the United States;

(5) management plans: no comparable provision;

(6) funds held by an insurance carrier unless they are held in a separate account;[3]

(7) funds held by an investment company regulated under the Investment Company Act of 1940.[4]

The Revenue Code amendments do not apply to:

545 (154) (1) governmental plans (the term "governmental plan" is not to include railroad retirement plans);

(2) plans of churches or conventions or associations of churches which are tax-exempt (under sec. 501(a) of the Code), unless the plan is covered by termination insurance;

(3) workmen's compensation plans: no comparable provision; these plans are excluded only if they are not qualified;

(4) non-U.S. plans: no comparable provision; these plans are excluded only if they are not qualified;

(5) management plans: no comparable provision;

(6) funds held by an insurance carrier unless held in a separate account; and

(7) funds held by a regulated investment company.

Staff comment.—The conferees may wish to consider adopting the following exclusions:

(1) governmental plans: the rule of the House bill;

(2) church plans: the rule of the House bill;

(3) workmen's compensation plans: the rule of the House bill;

(4) non-U.S. plans: with respect to the Labor Act amendments, the conferees may wish to adopt the rule of title I of the House bill excluding non-U.S. plans for nonresident aliens, but additionally require that, in order for the plan to be excluded, substantially all of

[2] There also is an additional exemption for plans established or maintained by a church or convention or association of churches which is tax-exempt (under section 501(a) of the Internal Revenue Code), unless the plan is covered by termination insurance.

[3], [4] Although the House bill does not specifically exempt these funds from the fiduciary responsibility rules, the policy of the House bill is the same.

its participants and beneficiaries must be nonresident aliens. With respect to Revenue Code amendments, these plans would be excluded as nonqualified plans;

(5) management plans: the conferees may wish to agree to adopt the rules of the House bill, with respect to Labor Act amendments. With respect to Revenue Code amendments, these plans would be excluded as nonqualified plans;

(6) insured plans: the policy of both bills is the same (in addition, the conferees may wish to provide that surplus in insurance company separate accounts generally would be excluded from the fiduciary rules);

(7) regulated investment companies: the policy of both bills is the same.

3. Prudent Man Rule

House bill.—

(1) Fiduciaries are to act with the care, under the circumstances then prevailing, that a prudent man acting in like capacity and familiar with such matters would use in conducting an enterprise of like character and aims. 53 (109)

(2) Fiduciaries also are to act exclusively for the purpose of providing benefits to participants and beneficiaries and for defraying reasonable plan administrative expenses.

Senate amendment.—

(1), (2) The Labor Act amendments are substantially the same as the House bill. 526 (109)

(The Revenue Code amendments do not include a prudent man rule. However, present law under the Revenue Code requires that each qualified plan be maintained for the "exclusive benefit" of the participants.)

Staff comment.—

(1), (2) The conferees may wish to adopt the rules of the House bill.

The conferees may wish to provide that where an individual has control over the management of the assets in his account (as determined under regulations of the Secretary of Labor), his account is to be exempt from any Labor Act fiduciary rules.

The conferees may wish to provide that if a plan meets the prudent man rule under the Labor Act amendments, then it will be deemed to meet the prudent man elements of the exclusive benefit rule under the Revenue Code, with respect to the prudence of investment decisions.

4. Diversification of Assets

House bill.—Fiduciaries are to diversify investments in order to minimize the risk of large losses 53 (109)

unless under the circumstances it is prudent not to do so.

526 (109) *Senate amendment.*—(Diversification of investments is to be achieved through the prudent man rule.)

Staff comment.—The conferees may wish to require a fiduciary to diversify plan investments so as to minimize the risk of large losses unless under the circumstances it is "clearly prudent" not to do so.

The conferees may also wish to clarify in the conference report that in a suit brought against the fiduciary for violation of this rule, the plaintiff's initial burden of proof is only to demonstrate that there has been a failure to diversify. The defendant would then have the burden of demonstrating that this failure to diversify was clearly prudent.

5. Investment in Employer's Securities, etc.

House bill.—

54, 73 (116, 147) An exception from the diversification rule (Item 4 above) is provided for profit-sharing, stock bonus, thrift and savings, and money purchase plans designed primarily to invest in employer's securities if the plan specifically provides for the exception.

(1) In these cases, the diversification requirements do not apply to securities of the employer or of a corporation that is a member of a controlled group including the employer.

(2) Also, in these cases a plan may hold real property without respect to the diversification requirements if (a) a substantial number of the parcels are geographically disbursed, and (b) each parcel, and its improvements, are suitable or readily adaptable for more than one use. Also, (c) this real property may be leased to one lessee, who may be a party-in-interest.

(3) Plans would be allowed three years after enactment to dispose of investments to meet the diversification requirements.

Senate amendment.—

Under the Labor Act amendments:

527, 543 (116, 117, 163) (1) Pension plans can invest no more than 7 percent of plan assets in securities of an employer or an employer group. Profit-sharing, stock bonus, thrift and savings, and similar plans are not subject to this limitation if the plan documents so provide.[5]

(2) Leasebacks of real property (and related personal property) to employers or employer groups would be treated the same as employer's securities for purposes of these investment rules.

(3) Plans would be allowed ten years to divest themselves of excess securities and leases now held.

[5] However, under other parts of the Labor Act amendments, plans would not be able to acquire employer securities from, or sell these securities to, an employer or other parties in interest.

The Revenue Code amendments prohibited transaction rules provide as follows:

(1) The Revenue Code amendments do not provide an exception with respect to acquisitions of employer's securities from parties in interest.

(2) However, the leaseback of real property and related personal property between a tax-qualified plan and the employer or employer group is allowed, to the extent allowed under the Labor Act amendments.

Staff comment.—

(a) With respect to the holding of employer securities by profit-sharing, stock bonus, and thrift plans, the House and Senate provisions are similar.

(b) Also, with respect to the holding of employer securities by defined contribution (but not defined benefit) pension plans, the conferees may wish to provide that employee stock ownership plans generally are to be treated the same as profit-sharing plans.

(c) With respect to leasebacks, the conferees may wish to follow the rules of the House bill for profit-sharing, stock bonus, etc., plans if the plan specifically provides for investment in this type of property.

(d) The conferees may also wish to provide that with respect to pension plans generally, these plans could invest up to 10 percent of plan assets in employer's securities provided that this met the general requirements as to diversification of assets. (In any event, the conferees may wish to provide that this limitation would be subject to the exception of paragraph (b) above.)

(e) With respect to transition periods, see item 6, *Staff comment.*

(f) If the conferees decide to generally adopt the prohibited transaction rules of the Senate amendment, they may also wish to allow acquisition and sale of employer securities (and leasebacks) between plans and parties-in-interest on an arm's-length basis for adequate consideration with no commission charged.

6. Prohibited Transactions—Party-in-interest Transactions

House bill.— 54

Fiduciaries may not: (111)

(1) Permit plan property to be transferred to or used by a person who is known to be a party-in-interest for any amount less than adequate consideration; or

(2) Permit the plan to acquire property or services from a person known to be a party-in-interest, for any amount more than adequate consideration.

Senate amendment.— 528, 529, 533

(1),(2) No comparable provision. (113)

(3) Under the Labor Act amendments, fiduciaries may not engage in a direct or indirect:

(a) sale, exchange, or leasing of property between the plan and a party-in-interest;

(b) lending of money or extension of credit between the plan and a party-in-interest;

(c) furnishing of goods, services, or facilities between the plan and a party-in-interest;

(d) transfer of plan assets to or use by or for the benefit of a party-in-interest; or

(e) deposit or investment of plan assets outside the United States unless authorized by the Secretary of Labor or unless the indicia of ownership remain within the jurisdiction of a U.S. district court.

(4) The Revenue Code amendments are essentially the same as point (3) (a)–(d), with respect to parties-in-interest.

Staff comment.—

(a) Some of the staff believe the rules of the House bill should be adopted; some of the staff believe the rules of the Senate amendment should be adopted.

540
(114, 149)

(b) Generally the staff believes that, regardless of the rules adopted, the excise tax on parties-in-interest method of enforcement should be included.*

(c) Some of the staff have proposed the following alternative:

(i) The basic rules of the House bill would be adopted.

(ii) In addition, the Secretary of Labor could investigate any transaction, and could require a showing that (A) adequate consideration was paid, (B) the transaction was prudent, and (C) the primary purpose of the transaction was to benefit the plan and its participants. If the Secretary was not satisfied that these criteria were met, he could order that transaction be rescinded; this would be subject to court review.

(d) Some of the staff have suggested the following alternative:

(i) The basic rules of the Senate amendment would be adopted.

(ii) However, a 10-year transition period would be allowed to phase out existing transactions involving holdings of assets and a 3-year transition period could be allowed for transactions involving the provision of services.

(e) If the conferees decide to adopt the prohibited transaction rules of the Senate amendment, they may wish to provide as follows:

*There was not complete staff agreement on this point.

(i) Parties-in-interest would be allowed to guarantee loans to an employee stock ownership plan where the loan is made by an independent third party.

(ii) All or part of plan assets could be invested in savings accounts, etc., of banks, savings and loans, etc., that act as the plan trustee, where the plan specifically requires such investment.

(iii) A life insurance company would be allowed to use its own separate account contracts to fund a pension plan for its employees. The same rule would apply with respect to an insurance company that is a wholly owned subsidiary of the employer if the insurance company does no more than 5 percent of its business with the employer. Also, a bank, savings and loan, etc., could act as the trustee of a plan for its employees.

(iv) Some staff believe that banks and brokerage houses should be able to perform "multiple services" for plans, and some believe this should be allowed only under a variance procedure (and that any variance should be consistent with any action taken by Congress with respect to the securities laws, generally).

(v) The Revenue Code amendment transition rules would be applied to the Labor Code amendments.

(vi) The exercise of conversion privileges, (*e.g.*, conversion of bonds into stock) would be allowed, pursuant to regulations.

7. Additional Prohibited Transactions

House bill.—Fiduciaries may not: 53 (111)

(1) deal with plan assets for their own account;

(2) receive any consideration for their personal accounts from any party dealing with the plan in connection with a transaction involving plan assets; or

(3) act in any transaction (in any capacity) involving a plan on behalf of a party whose interests are adverse to the interests of the plan, its participants, or their beneficiaries.

Senate amendment.—With respect to these prohibitions, the Labor Act amendments provide: 529 (113)

(1), (2) substantially the same as the House bill;

(3) fiduciaries may not represent any other party with the plan or in any way act on behalf of a party adverse to the plan or adverse to the interests of its participants or beneficiaries.

The Revenue Code amendments provide: 540 (114, 149)

(1), (2) Same as Labor Act amendments.

(3) No comparable provision.

Staff comment.—

(1), (2) The conferees may wish to adopt the House bill.

(3) The conferees may wish to provide that a fiduciary may not act in any transaction (in any capacity) involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan, its participants or beneficiaries.

8. Exceptions From Prohibited Transaction Rules

55 (119) *House bill.*—

Notwithstanding the prohibited transaction rules, a fiduciary may:

(1) receive benefits from the plan as a participant or beneficiary as long as the benefits are consistent with the terms of the plan as applied to all other participants and beneficiaries;

(2) receive reasonable compensation for services rendered to the plan unless the fiduciary receives full-time pay from the employer or employee organization whose employees or members are plan participants;

(3) receive reimbursement for expenses incurred;

(4) serve as an officer, employee, agent, etc., of a party-in-interest.

530, 541 (119, 150) *Senate amendment.*—Both the Labor Act and Revenue Code amendments provide the following exceptions from the prohibited transaction rules:

(1), (2), (3) Substantially the same as the House bill.

(4) The Revenue Code amendments are substantially the same as the House bill; the Labor Act amendments do not include this exception.

(5) Loans by the plan to parties-in-interest who are plan beneficiaries or participants where the loans are available on a nondiscriminatory basis, are specifically allowed by the plan, and are at reasonable interest and adequately secured.

(6) Payment by the plan to parties-in-interest for reasonable compensation for office space and other services necessary to operate the plan.

(7) Following specific instructions and authorizations in the plan governing document providing they are consistent with all the other fiduciary rules.[6]

(8) In addition, the Secretaries of Labor and Treasury together may establish additional exemptions from the prohibited transaction rules for individual fiduciaries, for transactions, or for classes of fiduciaries or transactions. Such an exemption must (a) be administratively feasible, (b) be in the interest of the plan, and (c) protect the rights of participants and beneficiaries. Also, an exemption is to be estab-

[6] Following the governing document, but consistently with the bill, also is required by both the House bill and the Senate amendment.

lished (d) by rule or regulation, and (e) after public notice that an exemption may be established.

Staff comment.—

(1), (2), (3) The rules are substantially the same; the conferees may wish to follow the House bill.

(4) The conferees may wish to adopt the rules of the House bill, which are the same as the Senate Revenue Code amendments.

(5), (6) If the Senate prohibited transaction rules are adopted, the conferees may wish to provide these exceptions.

(7) The policy of the two bills is substantially the same.

(8) If the conferees agree to adopt the Senate amendment prohibited transaction rules, they may wish to agree to allow the administering Secretary to establish additional exemptions as under the rules of the Senate amendment. However, the conferees may wish to allow exemptions only as to classes of transactions, and not as to individual cases.

9. Civil Liability

House bill.— 56, 58 (121, 124)

(1) Fiduciaries who breach any of their obligations under the bill are to be personally liable to the plan for losses resulting from the breach and for profits made through the use of plan assets, and are to be subject to other appropriate equitable relief, including removal.

(2) Fiduciaries are not to be liable for any breach committed before they became fiduciaries or after they cease to be fiduciaries.

Senate amendment.—This provision is included only in the Labor Act amendment. 532, 533 (121, 124, 128)

(1), (2) Substantially the same as the House bill.

(3) Additionally, parties-in-interest who knowingly participate in a prohibited transaction, or had reason to know it was a prohibited transaction, are to be personally liable for losses sustained by the plan or for profits they realized from the transaction.

Staff comment.—

(1), (2) Substantially the same in both bills.

(3) The conferees may wish to adopt the approach of the House bill and not provide civil liability for parties-in-interest.*

10. Excise Tax on Prohibited Transactions

House bill.—The House bill does not impose an excise tax on parties-in-interest who engage in prohibited transactions.

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*Not all the staff agree with this suggestion.

539 (149) *Senate amendment.*—This provision is included only in the Revenue Code amendments.

(1) Parties-in-interest who participate in prohibited transactions are to be subject to a 5 percent excise tax on the amount involved in the transaction.

(2) This tax is to be imposed for the taxable year in which the prohibited transaction occurs and for each subsequent taxable year (or part of a year) in which it is not corrected.

(3) Additionally, if the transaction is not timely corrected after notice from the IRS, the party-in-interest is to be subject to a 100 percent excise tax on the amount involved in the transaction.

(4) These taxes are nondeductible and payment will not relieve parties-in-interest from their duties to the plan or from correcting the transaction.

Staff comment.—The conferees may wish to adopt the excise tax sanction on parties-in-interest who engage in prohibited transactions whether the prohibited transaction rules of the House bill or those of the Senate amendment are chosen.*

In addition, the conferees may wish to make the excise tax sanction applicable, on a voluntary basis, for all prior years where there has not been a final determination of a prohibited transaction issue for the plan in question. In such a case, the excise tax sanction would be a substitute for the current sanction of plan disqualification.

11. Cooperation Between Agencies

154 (378) *House bill.*—

(1) The Secretary of Labor is authorized to make arrangements for cooperation with other government agencies.

537 (378) *Senate amendment.*—

(1) The Secretaries of Labor and Treasury are required to make necessary arrangements for cooperation and mutual assistance to prevent duplication of efforts in investigating fiduciary violations.

(2) The Secretary of Labor, in conjunction with the Secretary of the Treasury, is to establish regulations to enforce the prohibited transaction rules.

Staff comment.—See Part One (page 47), Staff Comments Relating to Jurisdictional Matters, *Operational Stage Jurisdiction*, points (6) and (7), and footnote 5.

12. Civil Liability—Statute of Limitations

58 (126) *House bill.*—

Civil actions against fiduciaries may be brought within the earliest of:

*There was not complete staff agreement on this point.

(1) 6 years after (a) the violation occurs, or (b) in the case of an omission, the latest date on which the violation could have been cured, or

(2) 3 years after (a) the plaintiff had actual knowledge of the violation, or (b) the date of filing of a report from which the plaintiff might reasonably have been expected to have obtained knowledge of the violation.

Senate amendment.—Under the Labor Act amendments, civil actions may be brought: 572 (126)

(1) within 5 years after the violation occurs.

(2) No comparable provision.

(3) In the case of fraud or concealment, civil actions may be brought within 5 years of the date of discovery of the violation.

(The present statute of limitations would govern the Revenue Code amendments (see sec. 6501, *et seq.*)).

Staff comment.—

(1), (2) The conferees may wish to adopt the rules of the House bill.

(3) The conferees may wish to adopt the rules of the Senate amendment, but allow civil actions to be brought within 6 years of the date of discovery of the violation in the case of fraud or concealment.

13. Civil Liability—No Exculpatory Agreements

House bill.— 58 (125)

(1) The bill provides that exculpatory agreements are void as against public policy.

Senate amendment.—Under the Labor Act Amendments: 533 (125)

(1) Exculpatory agreements would not relieve fiduciaries from any responsibility established by the bill.

(2) However, there may be agreements to allocate responsibilities among fiduciaries, and insurance coverage may be allowed, subject to regulations.

(Exculpatory agreements would have no effect under the Revenue Act amendments.)

Staff comment.—

(1) Substantially the same in both bills.

(2) With respect to allocation of responsibilities, see Item 15, below.

(3) The conferees also may wish to provide that:

(a) A plan may purchase insurance to indemnify losses resulting from a fiduciary breach, with the insuror maintaining the right of subrogation against the persons causing such loss.

(b) A fiduciary may purchase insurance to cover his potential liability from and for his own account.

(c) An employer or an employee organization may purchase insurance to cover potential liability of one

or more of its employees or officers who serves in a fiduciary capacity with regard to an employee benefit plan.

14. Structure of Plan Administration—In General

50, 51, 57 (106, 107, 122) *House bill.*—

(1) Plans are to be established in writing.

(2) Each plan is to provide for a plan administrator. Plan administrators are deemed to have full authority and responsibility to operate the plan, including the authority to amend the plan and establish a funding policy.

(3) Plan assets (except for certain annuity contracts guaranteed by an insurance company) are to be held in trust by trustees who are named in the governing instrument or appointed by the plan administrator.

(4) Trustees are to have exclusive authority and discretion to manage and control plan assets, subject to the direction of the plan administrator under the terms of the plan and except to the extent that management, etc., is delegated to investment managers.

(5) Plan administrators may employ investment advisers and investment managers for the plan.

525, 532 (106, 122) *Senate amendment.*—

(1) The Labor Act amendments require plans to be established in writing.

(2) No comparable provision.

(3) Under the Labor Act amendments, plan funds are deemed to be held in trust.

(4), (5) No comparable provision.

Staff comment.—

(a) Both the House and Senate provisions require plans to be in writing.

(b) The conferees may wish to provide that each pension plan is to provide a procedure for specifying a funding policy and the allocation of responsibilities with respect thereto. In addition, each plan is to specify the procedure for amending the plan. Also, plans may provide for plan administrators, selected in a manner consistent with the definition of "plan administrator" (see Item 19, below).

(c) The conferees may wish to provide that plan assets generally are to be held in trust by trustees. However, the conferees may also wish to provide that trusts would not be required:

(i) generally for plans funded by certain individual or group annuity contracts guaranteed by an insurance company;

(ii) where the Secretary of Labor exempts plans from the trust requirement (The Secretary of Labor could exempt pension plans not subject to the vesting, funding, or termination insurance requirements of the

Act, and could also exampt any welfare plans.); and

(iii) for Keogh plans and individual retirement accounts to the extent that the plan assets are held in custodial accounts that qualify under the Internal Revenue Code.

(iv) However, the fiduciary standards of the bill generally are to apply to the plans described in (i), (ii), or (iii), even though their assets are not held in trust.

(d) Trustees generally are to have exclusive authority and discretion to manage and control plan assets. Also, the employer that sponsors the plan may establish an investment committee (composed of officers or employees of the sponsor employer), and may establish a committee to direct and supervise benefit payments.

(5) Investment advisers and managers could be employed by the plan.

15. Structure of Plan Administration—Allocation of Responsibilities

House bill.— 51, 57 (107, 122)

(1) Where there are co-trustees, each must use reasonable care to prevent the other from committing a breach and they are to jointly manage and control the plan assets.

(2) Responsibilities may be allocated among trustees by agreement and in this event only the trustees to whom responsibilities have been allocated are liable for surcharge, unless the other trustees participate knowingly in the activity committing the breach.

(3) Where investment managers are employed:

(a) Trustees are not to be liable for acts or omissions of investment managers, and

(b) A plan administrator is not to be liable for acts or omissions of investment managers if the administrator chose the manager in accordance with the general fiduciary standards of the bill.

Senate amendment.—Comparable provisions appear only in the Labor Act amendments. 525, 532 (122)

(1) Fiduciaries who jointly undertake a duty must prevent other such co-fiduciaries from committing a breach of duty.

(2), (3) No comparable provision.

(4) No fiduciary is liable for the act of another if he objects in writing to the act and files a copy of the objection with the Secretary of Labor.

(Under the Revenue Code amendments, if more than one party-in-interest is liable for excise taxes with respect to prohibited transactions, then all are to be jointly and severally liable.)

Staff comment.—The conferees may wish to provide as follows:

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(a) If there are several trustees, each trustee is under a duty to participate in the administration of the plan and to use reasonable care to prevent a co-trustee from committing a breach of trust or to compel a co-trustee to redress a breach of trust.

(b) Generally, a trustee is under a duty not to delegate to others the acts which the trustee can reasonably be required personally to perform.

(i) However, the trustee can, in administering the plan properly delegate the performance of certain kinds of ministerial acts; in this case, the trustee is to be liable for the acts of the agent where the trustee has engaged in a breach of fiduciary responsibility;

(ii) Also where a trustee has properly allocated his duties to co-trustees, he is under a duty to exercise general supervision over their conduct.

(iii) Where a trustee delegates his discretionary duties to agents of other persons, he will not relieve himself of any responsibility.

(c) A trustee is to be liable for a breach of trust committed by a co-trustee in the following circumstances:

(i) if he participates in a breach of trust committed by his co-trustee;

(ii) if he improperly delegates the administration of the trust to the co-trustee;

(iii) if he approves or acquiesces in or conceals a breach of trust committed by his co-trustee;

(iv) if, by his failure to exercise reasonable care in the administration of the trust; he has enabled his co-trustee to commit a breach of trust; or

(v) if he neglects to take proper steps to compel his co-trustee to redress a breach of trust.

(d) Fiduciaries are responsible for carrying out their own duties in accordance with the fiduciary standards of the bill.

(e) A fiduciary (including a trustee) is to be liable for a breach of fiduciary responsibility committed by a co-fiduciary in the following circumstances:

(i) if he participates in a breach committed by a co-fiduciary;

(ii) if he approves or acquiesces in or conceals a breach committed by his co-fiduciary; or

(iii) if, by his failure to exercise reasonable care in the administration of his fiduciary responsibilities, he has enabled his co-fiduciary to commit a breach.

16. Return of Contributions

52
(108)

House bill.—

(1) An employer's contributions to a plan may be returned to him within one year if it (a) was made as a mistake of fact, or (b) was conditioned upon ap-

proval of tax deductibility and the deduction was not approved.

Senate amendment.— 526, 546

(1) No comparable provision. (107, 155)

(2) Under the Labor Act Amendments, plan assets remaining on dissolution or termination of a fund are to be distributed ratably to the beneficiaries or, if the trust agreement so provides, to the contributors.

(3) However, plan assets attributable to employee contributions are to be distributed ratably to employee contributors.

(Substantially the same rules apply under the Revenue Code amendments.)

Staff comment.—

(1) (a) The conferees may wish to adopt the rule of the House bill.

(1) (b) The conferees may wish to provide that an employer's contribution can be returned to him within one year after denial of qualification, if it was conditioned upon qualification of the plan.

(2), (3) The conferees may wish to adopt the rules of the Senate amendment.

17. Definitions—Party-in-interest

House bill.— 9, 13

(1) A party-in-interest is any administrator, officer, fiduciary, plan employee, employer with employees covered by the plan, persons in a controlled group with the employer, officers or employees or agents of the employer, employee organizations with members in a plan, officers or employees or agents of such organizations, relatives and partners of those persons, etc. (14, 23)

(2) However, where plan assets are invested in shares of a registered investment company, the investment does not by itself cause the company or the company's investment adviser or principal underwriter to be deemed to be a party-in-interest or fiduciary.

Senate amendment.—

The Labor Act amendments provide:

(1), (2) Under the Labor Act Amendments, the definition of "party-in-interest" is substantially the same as under the House bill. However, under the Senate amendment the term means persons who are "known" or who "should have been known" to be parties-in-interest.[7] 501 (14)

The Revenue Code amendments provide:

(1) The term "party-in-interest" is not the same as under the Labor Act Amendments. Under the Revenue Code amendments, "party-in-interest" does not include employees and agents, except for highly compensated employees (earning 10 percent or more of the wages 546 (156)

[7] Under the House bill, some prohibited transactions are limited to dealings with persons "known" to be parties-in-interest.

paid by the employer). Also, there is no "knowledge" requirement under the Revenue Code amendments. Additionally, the Revenue Code amendments specify the degree of ownership that will give a person "control" of a corporation, etc., or which will cause a corporation, etc., to be "controlled."

(2) Substantially the same as the House bill.

Staff comment.—

(1), (2) The conferees may wish to adopt the provisions of the Senate amendment, with modification of the "knowledge" rule.*

(3) With respect to Revenue Code amendments, if the excise tax prohibited transaction sanctions are chosen, the conferees may wish to follow the Revenue Code definition of party-in-interest in the Senate amendment.

18. Definitions—Fiduciary

13 (23) *House bill.—*

(1) A fiduciary is a person who exercises any discretionary authority or control regarding management of plan assets or plan administration, and a person who renders investment advice for compensation or who has authority or responsibility to do so.

(2) A registered investment company that is not otherwise a fiduciary does not become a fiduciary merely because plan assets are invested in its shares.

497, 500 (23, 48) *Senate amendment.—*

Under the Labor Act amendments:

(1) A fiduciary is a person who exercises any power of control, management, or disposition with respect to any moneys or property of a plan or has authority or responsibility to do so.

(2) Substantially the same as the House bill.

549 (159) Under the Revenue Code Amendments,

(1), (2) Substantially the same as the Labor Act amendments, but a fiduciary is not subject to the excise tax unless he benefits from a prohibited transaction.

Staff comment.—

(a) The House and Senate provisions are substantially the same except with regard to a plan advisor. In this regard, the conferees may wish to include all persons who advise pension plans for a fee as fiduciaries.*

(b) The conferees may wish to provide that persons who advise pension plans for a fee are to be treated as parties-in-interest under the excise tax provisions.

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*There was not complete staff agreement on this point.

19. Definitions—Plan Administrator

House bill.—A plan administrator is defined as: 10

(1) The person designated as administrator by the terms of the plan, or (17)

(2) If there is no such designation, the employer or the employee organization, or the joint board where there is a multiemployer plan.

(3) Additionally, a plan administrator is any other person who has the authority to amend the plan or to compel action under the terms of the plan on the part of any of the above persons.

Senate amendment.—The Labor Act amendments provide: 496 (17)

(1), (2) Substantially the same as the House bill.

(3) No comparable provision.

(The term "administrator" does not appear to be relevant to the fiduciary provisions in the Senate amendment.)

Staff comment.—The conferees may wish to conform their decision with respect to this provision to the decisions made with respect to the structure of plan administration, Items 14 and 15 above.

20. Definitions—Investment Manager

House bill.—An "investment manager" is a fiduciary (other than a trustee or administrator) who has the power to manage, acquire, or dispose of any plan assets, who is registered as an investment adviser (or is a bank), and who has acknowledged in writing that he is a fiduciary with respect to the plan. 20 (44)

Senate amendment.—The Senate amendment has no comparable provision.

Staff comment.—The conferees may wish to conform their decision with respect to this provision to the decisions made with respect to the structure of plan administration, Items 14 and 15 above.

21. Definitions—Adequate Consideration

House bill.—(1) "Adequate consideration" for a security traded on a registered national exchange is the price on that exchange. 11 (20)

(2) For other securities, adequate consideration is at least the offering price established by current bid and asked prices quoted by independent persons.

(3) Where the asset is not a security with a generally recognized market, adequate consideration is the fair market value as determined in good faith by the trustee or administrator pursuant to the terms of the plan.

Senate amendment.—The Labor Act amendments provide: 497, 500 (20)

(1), (2) Substantially the same as the House bill.

(3) Where there is no price quoted by independent persons, adequate consideration is to be the fair value determined pursuant to rule or regulation.

(The term "adequate consideration" is not used in the Revenue Code amendments.)

Staff comment.—

(1), (2) Substantially the same under both bills.

(3) The conferees may wish to provide that where there is no generally recognized market maintained by independent persons for the asset, adequate consideration is fair market value as determined in good faith by the trustee or administrator pursuant to the terms of the plan and in accordance with regulations.

22. Bonding

47 (102) *House bill.*—

(1) Generally, a fiduciary of a plan must be bonded within a specified dollar limit.

(2) Domestic corporations which act as plan fiduciaries, are subject to supervision and examination by government authority, are authorized to exercise trust powers or conduct an insurance business, and have capital in an amount provided by regulations (at least greater than $500,000) are to be exempt from the bonding requirements.

Senate amendment.—The Senate amendment does not include any bonding provisions. (However, a similar bonding provision is now included in sec. 13 of the Welfare and Pension Plans Disclosure Act.)

Staff comment.—The conferees may wish to adopt the rules of the House bill. Also, the conferees may wish to provide for aggregate bonding for plan advisers, putting them in an equal competitive situation with respect to banks.

23. Prohibition Against Certain Persons Holding Office

66 (397) *House bill.*—

(1) A person who has been convicted of certain specified crimes is prohibited from serving as a plan administrator, officer, trustee, custodian, counsel, agent, employee or consultant for five years after conviction or after the end of imprisonment, unless his citizenship rights have been fully restored or the United States Board of Parole determines that his service would not be contrary to the purposes of the bill.

(2) However, corporations or partnerships are not to be prevented from acting as plan administrators, etc., without a determination by the Secretary of Labor that such service would be inconsistent with the intention of this provision.

(3) Violations are to be punished with a fine of up to $10,000 or imprisonment of up to one year.

(4) The provision does not apply to conviction for a crime committed before the date of enactment.

Senate amendment.— 535

(1) The Senate amendment provisions (which are in the Labor Act amendments) are similar to those of the House bill. However, there are differences between the bills in the crimes which will prevent a person from holding office. (139)

(2) No similar provision.

(3) Substantially similar to the House bill.

(4) No similar provision.

Staff comment.—

(1) The conferees may wish to add the Senate provisions to the House provisions, with respect to the crimes that will prevent a person from holding office. In addition the conferees may wish to allow a person to hold office before the end of the 5-year period, but only if the U.S. Board of Parole determines that his service would not be contrary to the purposes of the Act.

(2) The conferees may wish to adopt the House bill only with respect to partnerships, but provide that the determination is to be made by the U.S. Board of Parole.

(3) The House and Senate rules are substantially the same.

(4) The conferees may wish to adopt the approach of the Senate amendment so that the provision would apply to persons convicted of a crime committed before the date of enactment.

24. Advisory Council

House bill.— 69

(1) A 15-member advisory council on employee welfare and pension benefit plans is to be established to advise and submit recommendations to the Secretary of Labor; these recommendations also are to be transmitted to Congress. (142)

(2) The advisory council is to have members from insurance, corporate trust, accounting, actuary, management, labor, investment management, and multiemployer benefit plan fields, and three representatives from the general public. Members are to be appointed by the Secretary of Labor.

(3) The bill provides for clerical, etc., services for the Council, and provides for members' compensation and expenses.

(4) Additionally, the Secretary of Labor is to submit a report to Congress covering his activities with respect to pension and welfare plans.

522
(142)

Senate amendment.—The basic rules of the Senate amendment are similar to the rules of the House bill with differences in details as follows:

(1) The Council is composed of 21 members, no more than 11 from any one political party.

(2) The Senate amendment would require that there be members of the Council to represent investment counsellors (the House bill would require representation for investment managers); the Senate amendment would require representation of persons currently receiving pension benefits and the House bill would not; the House bill would require representation of multiemployer plans and the Senate amendment would not.

(3) The Senate amendment provides the term of years for council members (generally 3 years), and the House bill has no similar provision.

(4) The Senate amendment provides that a majority of members constitutes a quorum, and action may be taken only by a majority vote of those present; there is no similar provision in the House bill.

(5) There are minor differences with respect to compensation to be paid.

Staff comment.—

The conferees may wish to provide:

(1) The Council would be composed of 15 members.

(2) The Council would have 3 representatives of the general public (at least one must be currently receiving retirement benefits), 3 representatives of labor (at least one from a multiemployer plan), 3 representatives of management (at least one from a multiemployer plan), one representative from each of the fields of insurance, corporate trust, actuarial counseling, accounting, investment counseling, and investment management.

(3), (4) The conferees may wish to adopt the provisions of the Senate amendment.

(5) The bills are substantially the same.

25. Effective Dates

71
(145)

House bill.—

(1) The fiduciary responsibility provisions are to take effect six months after the date of enactment.

(2) However, a three-year period is provided to dispose of assets to meet the diversification requirements, and the Secretary of Labor may provide additional time by rule or regulation.

537, 553
(145, 163)

Senate amendment.—

(1) The Labor Act amendments are to become effective January 1, 1974, except for the prohibited transaction provisions which are to become effective January 1, 1975. The Revenue Code amendments are to take effect on January 1, 1975.

(2) A ten-year period is allowed for a plan to dispose of employer securities to meet the limitations in the bill.

(3) In addition, transition rules are provided with respect to the excise tax on prohibited transactions where plans are now engaging in activities which do not violate current law, but would be prohibited under the amendments. Ten-year transition periods are available for the lease or joint use of property and for loans between a plan and party-in-interest under an existing contract. Additionally, where property is now under lease or joint use and qualifies for the ten-year transition rule, it could be sold at arm's-length terms to a party-in-interest.

Staff comment.—

(1) The conferees may wish to adopt an effective date of January 1, 1975; they may also wish to provide that the present Welfare and Pension Plans Disclosure Act is to apply until the new rules apply.

(2) See item 6 above.

(3) If the prohibited transaction rules of the Senate amendment are adopted, the conferees may wish also to adopt the transition rules of the Senate amendment.

ENFORCEMENT—CIVIL AND CRIMINAL ACTIONS, PREEMPTION, ETC.

1. Criminal Penalty

House bill.[1]— 147

(1) Any person who willfully (a) violates any provision in title I, (b) makes any statement in any application, report, etc., required to be filed or kept under the title knowing it is false or misleading in any material respect, or (c) forges or counterfeits or passes as true any document knowing it was forged or counterfeited for the purpose of influencing the action of the Secretary of Labor is guilty of a crime. (353)

(2) Punishment may be up to $10,000 and five years' imprisonment for individuals, and the fine on other persons may be $200,000.

Senate amendment.—No comparable provisions (but see sec. 9(a) of the WPPDA which provides a $1,000 fine and six months' imprisonment for willful violation of the WPPDA).

Staff comment.—The conferees may wish to follow the Senate amendment, and preserve existing law, but also increase the maximum penalty to one year's imprisonment and a $5,000 fine for individuals, and a maximum fine of $100,000 for other persons.

[1] These provisions relate to enforcement, etc., through the Labor Department and appear only in title I.

2. Civil Sanction

148 (354) *House bill.*—If a plan administrator fails or refuses to furnish a participant or beneficiary a copy of the latest annual report, etc., within 30 days after a request for it then the administrator may be personally liable to the participant for up to $50 a day from the date of failure, in the discretion of a court and the court may also order such other relief as it deems proper.

Senate amendment.—No comparable provision. (However, existing sec. 9(b) of the WPPDA imposes a similar liability.)

Staff comment.—The conferees may wish to adopt the provisions of the House bill but increase the maximum payment to the participant to $100 a day.

3. Investigations

148 (355) *House bill.*—

(1) The Secretary of Labor may, where he has reasonable cause, enter such places, inspect such accounts, and question such persons as he deems necessary in order to determine whether any provision of title I has been or is about to be violated.

(2) The Secretary may require the filing of supporting schedules of information.

(3) The Secretary may publish and report on such investigations to any interested person or official.

(4) No comparable provision.

518 (355) *Senate amendment.*—

(1) Similar to the House bill. However, the Senate amendment does not require the Secretary to have "reasonable cause" before he may enter and inspect records and accounts. etc., but provides that there may be no more than one examination of books and records per year, unless the Secretary has reasonable cause to believe the Act was violated.

(2) Similar to the House bill.

(3) No comparable provision. (However, existing sec. 10 of the WPPDA has been interpreted by the Labor Department to provide similar authority.)

(4) The Secretary of Labor and the Secretary of the Treasury are to make arrangements needed to prevent duplication of effort regarding investigation of violations relating to fiduciaries.

Staff comment.—

(1) The conferees may wish to follow the Senate amendment and provide that the Secretary of Labor may inspect records and accounts and question such persons as he deems necessary in order to determine whether any provision of the Act has been or is about to be violated, but limit such inspection to once

annually unless the Secretary has reasonable cause to believe the act was violated. In addition, the conferees may wish to provide that the Secretary of Labor may enter such places as he deems necessary to determine the facts relative to an investigation, but only where he has reasonable cause (as under the House bill).

(2) The conferees may wish to adopt the approach of the House provisions.

(3) The conferees may wish to adopt the House provisions with the limitation that information may be made available only to persons who are actually affected by the matter which is the subject of an investigation.

(4) See Part One, Staff Comments Relating to Jurisdictional Matters, *Operational Stage Jurisdiction*, p. 47, footnote 5.

4. Subpoena Power; Delegation of Power

House bill.—The Secretary of Labor is given the same powers of subpoena as are given to the Federal Trade Commission. 149 (357)

Senate amendment.—Similar to the House bill. In addition, to the extent he considers appropriate, the Secretary is to delegate his auditing and investigation functions with respect to insured banks acting as fiduciaries to appropriate Federal banking agencies. 518 (357)

Staff comment.—The conferees may wish to adopt the approach of the Senate provision.

5. Civil Actions by Participants and Beneficiaries

House bill.—Civil actions may be brought by participants and beneficiaries: 150 (358)

(1) to receive payments on account of a plan administrator's failure to furnish an annual report, etc.;

(2) to recover benefits due under the plan;

(3) to clarify rights to future benefits under the plan;

(4) for relief from breach of fiduciary responsibility; and

(5) to enjoin any act or practice which violates title I.

Senate amendment.— 567, 569 (359)

(1) No comparable provision but see sec. 9(b) of the WPPDA.

(2), (3), and (4) Similar to the House bill.

(5) Participants and beneficiaries may bring suit to enjoin a fiduciary breach.

Staff comment.—

(1)–(4) The conferees may wish to adopt the approach of the House provisions.

(5) See Part One, Staff Comments Relating to Jurisdictional Matters, *Operational Stage Jurisdiction*, p. 47, point (8).

6. Civil Actions by Secretary of Labor

150, 152 (358, 375) *House bill.*—The Secretary of Labor may bring suit:

(1) for breach of fiduciary responsibility, and

(2) to enjoin any act or practice which violates title I.

(3) The Secretary of Labor may also intervene in actions brought under the Act by participants and beneficiaries.

568, 571 (358, 375) *Senate amendment.*—

(1) The Secretary may petition the court for an order requiring the return of assets transferred from the fund, requiring payment of benefits to a participant or beneficiaries, restraining conduct violating the fiduciary rules, and granting other appropriate relief, including removal of a fiduciary.

(2) The Secretary may bring suit when he believes that an employee's benefit fund is being or has been administered in violation of the Act or documents governing the fund.

(3) Similar to the House bill.

Staff comment.— See Part One, Staff Comments Relating to Jurisdictional Matters, *Initial Stage Jurisdiction*, p. 46, point (7), *Operational Stage Jurisdiction*, p. 46, points (1), (2), and (3); p. 47, points (7) and (8).

7. Arbitration

House bill.—No comparable provision.

566 (365) *Senate amendment.*—

(1) Each pension plan is to provide a procedure for review of disputes between the plan administrator and participants and beneficiaries and an opportunity for arbitration of disputes.

(2) Civil actions may be brought by participants or beneficiaries in lieu of submitting the dispute to arbitration.

(3) Arbitration is to be governed by sec. 301 of the Labor Management Relations Act.

(4) The cost of arbitration proceedings is to be paid by the plan, unless the arbitrator determines the participant's allegations are frivolous and assesses all or part of the cost to him.

(5) If a dispute is subject to procedures established by collective bargaining for resolution of the dispute, the Secretary of Labor may waive the requirement for arbitration if he determines these procedures are reasonably fair and effective.

Staff comment.—

(a) Some of the staff believe the Senate provisions should be adopted, and other staff believe they should not be adopted.

(b) Some of the staff have suggested the following alternative:

(i) each plan would be required to provide a claims procedure, and would be required to explain this procedure to plan participants and beneficiaries;

(ii) if a claim was denied under this procedure, the denial would have to be in writing with an explanation of the reasons for denial;

(iii) individuals who were receiving benefits under the plan would have a voice in the decision-making process with respect to claims against the plan;

(iv) the question of an arbitration proceeding would be studied by the congressional task force, which would study portability, etc.

(c) Some of the staff have suggested that if the Senate provisions are adopted, then the revenues from the excise taxes on underfunding and on prohibited transactions would be used, through the Department of Labor, to finance the arbitration costs incurred by plans.

(d) Some of the staff have suggested that if the Senate provisions are adopted, the ability to claim arbitration should be limited. Arbitration would be allowed where 10 percent of the plan participants or 10 participants, whichever is less, request an arbitration on a uniform issue or issues. In this case the plan would be required to consent to arbitration and the plan agreement must so provide.

8. Service of Process, etc.

House bill.— 150

(1) Service of summons, subpoena, or other legal (368)
process of a court upon a trustee or plan administrator will constitute service on the plan.

(2) A plan may sue or be sued as an entity.

Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to adopt the rules of the House bill. In addition, the conferees may wish to provide (in accord with the provisions of S. 4) that if the plan does not effectively designate someone as agent, the Secretary of Labor is to be designated as the agent for service of process on plans in civil actions arising out of this Act.

9. Money Judgment

House bill.—A money judgment under title I against 150
a plan is to be enforceable only against the plan as an (369)
entity and not against any other person, unless that person's liability is established in his individual capacity.

Senate amendment.—No comparable provisions.

Staff comment.—The conferees may wish to adopt the rules of the House bill.

10. Jurisdiction of Courts, etc.

150 (370) *House bill.*—

(1) Civil actions under title I may be brought in any State or Federal court of competent jurisdiction.

(2) Where participants or beneficiaries bring actions with respect to breach of fiduciary responsibility or to enjoin an act or practice violating the Act, the action *must* be brought as a class action if the jurisdiction allows it and the requirements for a class action are not unduly burdensome in the circumstances.

(3) Where an action is brought in a U.S. District Court it may be brought in the district where the plan is administered, where the breach took place, or where the defendant resides or may be found; process may be served in any other district where a defendant resides or may be found.

568, 570 (358, 370) *Senate amendment.*—

(1) Suits generally may be brought in the same courts as under the House bill, except that suits by participants and beneficiaries may be brought without respect to the amount in controversy and without regard to the citizenship of the parties.

(2) Suits for breach of fiduciary duty, to enjoin acts or practices violating the Act, and for benefits *may* be brought as class actions.

(3) Similar to the House bill.

Staff comment.—

(1) The conferees may wish to adopt the rules of the Senate bill, but not allow suit under title I to be brought in State court. (Suit brought in State court could be based on breach of contract, but suit could be removed, by either party, to Federal court in actions involving an interpretation of this Act.)

(2) The conferees may wish to adopt the rules of the House bill.

(3) The House and Senate rules are the same.

11. Labor Department Attorneys

152 (372) *House bill.*—Attorneys appointed by the Secretary of Labor *may* represent the Secretary in civil actions, except as provided in 28 U.S.C. § 518(a) (relating to suits before the Supreme Court and the Court of Claims).

570 (372) *Senate amendment.*—Attorneys appointed by the Secretary of Labor *shall* represent the Secretary, except as provided in 28 U.S.C. § 518(a).

Staff comment.—The conferees may wish to adopt the rules of the Senate bill.

12. Jurisdiction of District Courts.

House bill.— 152 (373)

(1) U.S. district courts are to have jurisdiction, without respect to the amount in controversy, in actions brought by the Secretary of Labor on account of breach of fiduciary duty, or to enjoin any act or practice which violates title I.

(2) In actions brought by participants or beneficiaries to recover benefits, on account of breach of fiduciary duty, etc., the jurisdiction of U.S. district courts is subject to the requirements of 28 U.S.C. § 1331 (relating to civil actions where the amount in controversy exceeds $10,000).

Senate amendment.— 568, 570 (358, 360)

(1) The Secretary of Labor may bring suit in U.S. district courts having jurisdiction of the parties (or the U.S. District Court for the District of Columbia) for orders requiring return of assets to a fund, payment of benefits to a participant, restraining conduct of fiduciaries, etc.

(2) Participants and beneficiaries may sue for benefits, or to clarify rights, in any Federal court of competent jurisdiction (or the U.S. District Court for the District of Columbia) without respect to the amount in controversy and without regard to the citizenship of the parties.

Staff comment.—

(1) The House and Senate rules are similar (except to the extent that title I violations would be subject to injunctive relief).

(2) The conferees may wish to adopt the rules of the Senate amendment.

13. Attorney's Fees, etc.

House bill.— 152 (374)

(1) In actions by participants or beneficiaries, the court may allow reasonable attorney's fees and costs to either party, at its discretion.

(2) Except as to actions brought to recover benefits and actions brought by the Secretary of Labor, no action may be brought except on leave of the court obtained on verified application and for good cause shown; the application may be made *ex parte.*

Senate amendment.—No comparable provisions.

Staff comment.—

(1) The conferees may wish to adopt the rules of the House bill.

(2) The conferees may wish to follow the approach of the Senate amendment, and not adopt the rules of the House bill.

14. Annual Report of Secretary of Labor

153 (376) *House bill.*—

(1) The Secretary of Labor is to report annually to Congress regarding his administration of title I.

(2) The report is to include: (a) an explanation of variances granted, (b) a status report on any plan operating with a variance and its progress in achieving compliance with the Act, (c) the projected date for terminating the variance, and (d) information, recommendations, etc., for further legislation in connection with matters covered by title I as the Secretary finds advisable.

Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to adopt the rules of the House bill as to matters covered by or affecting matters in title I.

15. Cooperation With Other Agencies—by Secretary of Labor

154 (378) *House bill.*—

(1) The Secretary of Labor may make arrangements or agreements for cooperation or mutual assistance in performing his functions under title I as he finds practicable and consistent with law.

(2) The Secretary of Labor may use, on a reimbursable basis, the facilities or services of any department, etc., of the United States with the lawful consent of such department, etc.

(3) Each department, etc., in the United States is directed to cooperate with the Secretary of Labor and to the extent permitted by law to provide him such information and facilities as he requests in performing his functions under title I.

(4) The Attorney General is to receive from the Secretary of Labor for appropriate action evidence which he develops that warrants consideration for criminal prosecution under Federal law.

495 (378) *Senate amendment.*—

(1), (2), and (3) Substantially the same as the House bill.

(4) No comparable provision.

Staff comment.—

(1), (2), and (3) The rules are substantially the same.

(4) The conferees may wish to accept the rules of the House bill.

16. State Agencies

155 (380) *House bill.*—

(1) The Secretary of Labor may, on the application of a State, authorize the State to require the filing of annual reports for plans which are exempt from filing

with the Secretary of Labor because they have fewer than 26 participants, etc.

(2) When authorization is granted, the State may reject the filing in the same manner as may the Secretary of Labor and may use the same remedies as the Secretary of Labor with respect to plans domiciled in that State.

(3) The Secretary of Labor may appoint a State as his agent for the purpose of maintaining civil actions with respect to breaches of fiduciary duty, or for enjoining actions or practices that violate title I with respect to plans exempt from filing with the Secretary of Labor, as described above.

(4) The Secretary of Labor may use to a limited extent, on a reimbursable basis, the facilities or services of any State or political subdivision thereof with the lawful consent of the State, etc.

Senate amendment.— 495

(1), (2), and (3) No comparable provisions. (378)

(4) The Secretary of Labor may use, on a reimbursable basis, the facilities of any State, with its lawful consent. Under this provision the State could investigate individual plans or classes of plans, etc.

Staff comment. —

(1), (2), and (3) The conferees may wish to adopt rules similar to those of the House bill with respect to plans that have been exempted from filing pursuant to a waiver by the Secretary of Labor. (See Part Two, Reporting and Disclosure—Labor Department, Item 3, *Staff comment*, page 26.)

(4) The conferees may wish to adopt the Senate amendment to the extent that it would allow State agencies to investigate classes of plans on behalf of the Federal Government, on a reimbursable basis and at the request of the Federal Government.*

17. Administrative Procedure—Department of Labor

House bill.—The Administrative Procedure Act is to be applicable to title I. 156 (381)

Senate amendment.—No comparable provision (but see sec. 17(a) of the WPPDA).

Staff comment.—The conferees may wish to adopt the rules of the House bill.

18. Administration—Department of Labor

House bill.—No employee of the Department of Labor is to administer or enforce title I with respect to any employee organization of which he is a member or employer organization in which he has an interest. 156 (382)

Senate amendment.—No comparable provision (but the same provision is in sec. 17(b) of the WPPDA).

Staff comment.—The conferees may wish to adopt the rules of the House bill.

*There was not complete staff agreement on this point.

19. Appropriations—Department of Labor

156 (383) *House bill.*—There are authorized to be appropriated such sums, without fiscal limitation, as may be necessary to enable the Secretary of Labor to carry out his functions and duties under title I.

365 (383) *Senate amendment.*—There are authorized to be appropriated such sums as may be necessary to enable the Secretary of Labor to carry out his functions and duties under the Act.

Staff comment.—The conferees may wish to adopt the rules of the Senate bill.

20. Separability

156 (384) *House bill.*—If any provision of the Act, or the application of any provision, is held invalid, the remainder of the Act or the application of the provision to other persons and circumstances is not to be affected.

Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to adopt the rules of the House bill.

21. Interference With Rights

House bill.—

156 (385) (1) It is unlawful for persons to discharge, fine, discriminate against, etc., a participant or beneficiary for exercising any right under the plan or title I or to interfere with the attainment of any right to which he may become entitled.

(2) A person who violates this provision may be fined $10,000 and imprisoned for five years.

Senate amendment.—

575 (386) (1) Similar to House bill. In addition, the Senate amendment provides that it is unlawful to discharge, etc., any person because he has given information, has testified, or is about to testify in an inquiry or proceeding relating to this Act.

(2) A person who violates this provision may be fined $10,000 and imprisoned for 1 year.

Staff comment.—The conferees may wish to adopt the provisions of the Senate amendment, and also provide that they are to be effective on the date of enactment.

22. Coercive Interference

157 (386) *House bill.*—

(1) It is unlawful for a person through the use of fraud, force, violence, etc., to restrain, coerce, intimidate, etc., any participant or beneficiary for the purpose of interfering with or preventing him from exercising any right to which he is or may become entitled to under the plan or title I.

(2) Persons willfully violating this section may be fined $10,000 and imprisoned for one year.

Senate amendment.— 576

(1), (2) Same as the House bill. (385)

Staff comment.—The conferees may wish to adopt the provisions of the Senate amendment, and provide that they are to be effective on the date of enactment.

23. Registration of Pension Plans With Department of Labor

House bill.— 157

(1) Plan administrators of pension plans to which the vesting, funding, or termination insurance parts of title I apply must file an application for registration of the plan with the Secretary of Labor. (387)

(2) The filing is to be within 270 days after the beginning of the earliest plan year to which the vesting or funding sections first apply to the plan. If a plan is otherwise required to file before December 31, 1975, the Secretary may postpone the initial filing until that date.

(3) When the application is filed, the Secretary of Labor is to determine whether the plan is qualified for registration under this provision and if it is qualified, the Secretary will issue a certificate of registration for the plan.

(4) If the Secretary of Labor determines that a plan required to qualify under this provision is not qualified, he is to notify the plan administrator of the deficiencies in the plan, and he must provide the administrator, etc., a reasonable time to remove the deficiencies in the plan.

(5) If the Secretary determines the deficiencies have been removed, he is to issue or continue the certificate of registration. If, after a hearing, he determines the deficiencies have not been removed, he is to deny or cancel the certificate and take such further action as may be appropriate under the enforcement provisions of title I.

(6) A pension plan is qualified for registration under this provision if it conforms to and is administered in accordance with the provisions of title I applicable to the plan.

(7) The Secretary of Labor may provide, by regulation, for the filing of a single report satisfying the reporting and registration requirements of title I.

(8) Where a registered pension plan is amended after filing, the plan administrator is to file with the Secretary of Labor a copy of the amendment and additional information as required so the Secretary may determine if there is continued compliance with these provisions.

Senate amendment.—No comparable provision. (Generally, under the Senate amendment, the vesting,

funding, etc., provisions apply to tax-qualified plans and are administered by the Secretary of the Treasury. As a practical matter it is anticipated that almost all pension plans will apply for a determination letter from the Secretary of the Treasury to ensure that they have met the requirements of the law governing tax qualification.)

Staff comment.—See Part One, Staff Comments Relating to Jurisdictional Matters, *Initial Stage Jurisdiction*, p. 45, point (4), and p. 46, point (5).

24. Enforcement of Registration With the Secretary of Labor

159 (390) *House bill.*—

(1) The Secretary of Labor may take action under this provision when

(a) he determines that a pension plan has not filed an application for registration when an application is required,

(b) he issues an order denying or cancelling a certificate of registration of a pension plan, or

(c) he determines in the case of a pension plan subject to the funding provisions that there has been a failure to make required contributions, or to pay other fees as are required under title I.

(2) In these cases, the Secretary of Labor may petition any U.S. district court having jurisdiction of the parties (or the U.S. district court for the District of Columbia) for an order requiring the employer or plan administrator to comply with title I as to qualify the plan for registration, or to take any action required of plan administrators under the enforcement of funding provisions of title I.

Senate amendment.—No comparable provision.

Staff comment.—See Part One, Staff Comments Relating to Jurisdictional Matters, *Initial Stage Jurisdiction*, p. 45, point (4), and p. 46, points (5) and (6).

25. Preemption of State Law

160 (391) *House bill.*—

(1) It is declared to be the intent of Congress that the provisions of title I are to supersede all State laws as they may now or hereafter relate to the reporting, disclosure, and fiduciary responsibilities of persons acting on behalf of any employee benefit plan to which the reporting, disclosure, and fiduciary provisions of title I apply.

(2) It is declared to be the intent of Congress that the vesting, funding, and plan termination insurance provisions of title I are to supersede all State laws that may now or hereafter relate to (a) the nonforfeitability of participant's benefits in plans covered by the vesting and funding requirements, (b) the funding

requirements of such plans, (c) the adequacy of financing such plans, (d) the portability requirements, and (e) the insurance of pension benefits under such plans.

(3) No person is relieved or exempted from any State law that regulates insurance, banking, or securities.

(4) Nothing is to prohibit a State from requiring that reports required to be filed with the Secretary of Labor are to be filed with the State.

(5) No employee benefit plan subject to title I (other than a plan established primarily for the purpose of providing death benefits), or any trust established under such a plan is to be deemed to be an insurance company or other insurer, bank, trust company or investment company, or to be engaged in the business of insurance or banking for purposes of any law of any State regulating insurance companies, insurance contracts, banks, trust companies, or investment companies.

(6) Nothing is to prohibit a delegation of authority by the Secretary of Labor to an appropriate State agency (see above, Item 16).

(7) Nothing in title I is to be construed to alter, invalidate, supersede, etc., any law of the United States or rule or regulation issued thereunder, except with respect to the repeal of the existing WPPDA.

Senate amendment.—(1) and (2) It is declared to be the intent of Congress that the provisions of this Act and the WPPDA are to supersede all laws of the States as they may now or hereafter relate to the subject matters regulated by this Act or the WPPDA. However, this is not to be construed to exempt or relieve any employee benefit plan not subject to this act or the WPPDA from any State law. 573 (391)

(3), (4) Same as the House bill.

(5), (6) No comparable provision.

(7) Substantially the same as the House bill.

Staff comment.—(1), (2), (3), (4), (7) The conferees may wish to merge the provisions of the House bill and the Senate amendment.

(5) Some of the staff believe the House provision should be adopted and other staff believe it should not be adopted.

Some of the staff have suggested that the House provision be adopted for a limited period of time, such as 3 years, and that during this period, there should be a study by a joint Federal and State commission to determine whether preemption in this area should be continued for more than 3 years. It is suggested that the commission members be appointed by the President with the advice and consent of the Senate and

that the commission include representatives of State insurance commissioners, the Secretaries of Labor and Treasury, and representatives of labor, management, and the general public.

(6) The conferees may wish to adopt the rules of the House bill.

26. Preemption of State Law—Jurisdiction of State Courts

House bill.—No comparable provision.

574 (393) *Senate amendment.*—

(1) The preemption provision is not to prevent a State court from asserting jurisdiction with respect to an action for accounting by a fiduciary during the operation or on the termination of an employee benefit fund.

(2) Also, State courts may assert jurisdiction in actions by fiduciaries requesting instructions from the court or seeking an interpretation of the trust instrument or document.

(3) In any action for accounting or instructions, the provisions of this Act and the WPPDA are to supersede all State laws as they relate to the fiduciary and reporting and disclosure responsibilities, except insofar as they may relate to the amount of benefits due under the plan.

(4) The Secretary of Labor or a participant or beneficiary of a plan affected by this provision may remove a State court action for accounting or instructions to a U.S. district court if the action involves interpreting fiduciary or reporting and disclosure responsibilities.

(5) The jurisdiction of a State court is conditioned on

(a) written notification to the Secretary of Labor identifying the parties to the action, etc.,

(b) evidence that participants and beneficiaries have been adequately notified regarding the action, and

(c) the right of the Secretary of Labor or participants or beneficiaries to intervene in the action as interested parties.

Staff comment.—The conferees may wish to follow the approach of the House bill and also provide that State court jurisdiction with respect to employee benefit plans is to extend only to contract actions.

27. Actions Brought by Administrator or Fiduciary against the Secretary of Labor

House bill.—No comparable provision.

572 (395) *Senate amendment.*—Suits may be brought by a plan administrator or fiduciary in the U.S. district

court to review a final order of the Secretary of Labor, to restrain the Secretary from taking an action contrary to the Act, or to compel action required under the Act.

Staff comment.—The conferees may wish to adopt the rules of the Senate amendment.

28. Rules and Regulations

House bill.— 153

(1) The Secretary of Labor is to prescribe such rules and regulations as he finds necessary or appropriate to carry out the provisions of title I. (377)

(2) The rules and regulations may define accounting, technical, and trade terms; may provide for the keeping of books and records; and may provide for the inspection of books and records.

(3) Regulations for purposes of vesting and funding are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of the Treasury.

Senate amendment.— 494

(1) Similar to the House bill. (377)

(2) and (3) No similar provisions.

Staff comment.—

(1) The two provisions are substantially the same.

(2) The conferees may wish to adopt the rules of the House bill, specifically provide that the rules may define actuarial terms, and also provide that the Secretary's authority to issue regulations is not to be limited by the items specified.

(3) See Part One, Staff Comments Relating to Jurisdictional Matters, p. 45.

29. Reliance on Administrative Interpretations

House bill.—A person is not to be subject to criminal liability for failure to comply with the reporting and disclosure provisions of the bill if he proves he acted (a) in good faith, and (b) in conformity with, and reliance on, a regulation or written ruling of the Sectary of Labor.

Senate amendment.—No comparable provision. (However, sec. 12 of the Welfare and Pension Plan Disclosure Act includes similar provisions and applies them to civil as well as criminal liability.)

Staff comment.—The conferees may wish to provide that a person is not to be subject to civil or criminal liability for failure to comply with the reporting, disclosure, and bonding provisions of the act if he proves than he acted (a) in good faith and (b) in conformity with and in reliance on a written ruling or interpretation of the Act by the Secretary of Labor.

30. Studies

145, 250 (350, A–126)

House bill.—Title I contains points (1) and (2). Both title I and title II contain points (3), (4), and (5).

(1) Title I provides that the Secretary of Labor is to undertake studies relating to private pension plans, including the cost impact of the bill on pension plans, the role of pension plans in providing economic security, the operation of pension plans, and methods of encouraging the growth of the private pension system.

(2) In addition, title I provides that the Labor Department is to make its resources fully available to the Congress, in connection with the Congressional study of governmental plans.

(3) The Committee on Education and Labor and the Committee on Ways and Means are to undertake studies of retirement plans financed or maintained by the United States, or by State and local governments.

(4) The studies shall consider the adequacy of participation, vesting, and fiduciary standards, as well as financing methods. In determining whether the funding standards of the bill should be imposed on governmental plans, the studies shall take account of the taxing power of the governmental unit maintaining the plan.

(5) The two committees are to report the results of the governmental studies to the House of Representatives by December 31, 1976.

Senate amendment.—

421, 520 (A–126, 350)

(1) The Secretary of Labor is authorized to undertake appropriate studies relating to employee benefit plans which are generally similar to the studies provided for under title I of the House bill.

(2) Under the Senate amendment, qualified governmental plans are subject to the participation and vesting requirements (although the effective date for the vesting requirements is postponed until plan years beginning after December 31, 1980).

(3) The Secretary of the Treasury, or his delegate, is to study the extent to which pension plans established or maintained by the United States, or by any State or local government, are adequately funded. The study is to take account of the taxing power of the governmental units.

(4) The Secretary of the Treasury is to report the results of this study to the Committee on Finance and the Committee on Ways and Means by December 31, 1976.

Staff comment.—

(1) The conferees may wish to agree to the approach of the House bill, with the studies being for the pur-

pose of providing statistical information and analyses with regard to pension, profit-sharing, etc., plans. To the extent possible, such information should be analyzed by earnings levels of covered employees, size of plans, type of businesses in which the covered employees are engaged, and extent to which the plans provide for participation, vesting, and funding in excess of the minimum statutory requirements.

(2)–(5) The conferees may wish to consider agreeing to the approach of the House bill, with the following additions:

(a) The Treasury Department, as well as the Labor Department, is to make its resources available to the Congress.

(b) The studies are to be conducted by all four committees (i.e., the Senate Finance Committee and the Senate Committee on Labor and Public Welfare, in addition to the above-mentioned House committees).*

31. Employees of Labor Unions as Plan Participants

House bill.—Title II provides that in the case of a qualified multiemployer plan, the participation, discrimination, exclusive benefit, etc., requirements are to be applied as if all employers who are parties to the plan are a single employer. (19, 213, 218 (42, A–69, A–80))

Senate amendment.—The rules are essentially the same.

Staff comment.—While the House and Senate rules are essentially the same, the House rules may be preferred from a technical standpoint. (See also, Part One, Vesting, Item 8, *Staff Comment*, page 14.) (441, 627 (42, A–69, A–80))

In addition, the conferees may wish to provide that, following current labor law (established by court decisions), employees of labor unions and of plans may participate in a multiemployer plan (negotiated by the union on behalf of its members), and that in this case also the participation, discrimination, exclusive benefit, etc., requirements are to be applied on an overall plan basis and not on an employer-by-employer basis. However, the conferees may wish to limit this rule to situations where the union (or the plan) as an employer meets the general breadth-of-coverage requirements of the Internal Revenue Code.

*Not all of the staff agree on studies by each of the four committees.

[COMMITTEE PRINT]

SUMMARY OF DIFFERENCES BETWEEN THE SENATE VERSION AND THE HOUSE VERSION OF H.R. 2 TO PROVIDE FOR PENSION REFORM

PREPARED FOR THE USE OF

THE HOUSE AND SENATE CONFEREES ON H.R. 2

PART FOUR

LIMITATIONS ON CONTRIBUTIONS AND BENEFITS, EMPLOYEE SAVINGS FOR RETIREMENT, LUMP-SUM DISTRIBUTIONS, ADMINISTRATION AND ENFORCEMENT, AND MISCELLANEOUS

JUNE 19, 1974

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LIMITATIONS ON CONTRIBUTIONS AND BENEFITS

1. Specific Contribution Limits on Proprietorships, Partnerships, or Subchapter S Corporations

House bill[1]— *Page numbers* †

(1) The bill increases the maximum deductible contribution on behalf of self-employed persons[2] to the lesser of (a) $7,500 or (b) 15 percent of earned income. (Under present law, the limitation is the lesser of (a) $2,500 or (b) 10 percent of earned income.) The same change is made as to excludible contributions on behalf of subchapter S corporation shareholder-employees.[3] 280, 281 (A–169, A–171)

(2) No more than the first $100,000 of earned income may be taken into account in applying the percentage limits, both as to self-employed persons and as to shareholder-employees. 281 (A–171)

(3) Self-employed persons (but not shareholder-employees) are permitted to set aside up to $750 a year out of earned income, even though it exceeds the 15-percent limitation of point (1). 280 (A–170)

Senate amendment.—

(1) The Senate amendment is the same with respect to self-employed persons. As to shareholder-employees of subchapter S corporations, the Senate amendment repeals the limitations, instead of merely increasing them. 621, 614 (A–169, A–171)

(2) The Senate amendment is essentially the same as the House bill except that, consistent with point (1), it does not apply to subchapter S corporation shareholder-employees. 625 (A–171)

(3) Essentially the same as the House bill. 624 (A–170)

2. Defined Benefit Limits for Proprietorships, Partnerships, and Subchapter S Corporations 282 (A–172)

House bill.—(1) The bill authorizes Treasury regulations to allow self-employed persons and shareholder-employees to translate, in effect, the 15-percent-$7,500 limitations on contributions into limitations on

†"Page numbers" outside parentheses are the numbers of the relevant pages in the print of H.R. 2 dated March 4, 1974. The first 353 pages of that print, in linetype, represent the bill as passed by the House of Representatives; the remaining pages of that print, in italic type, constitute the Senate amendment.

"Page numbers" inside parentheses are the numbers of the relevant pages in the comparative prints prepared by the staffs.

[1] The House bill provisions relating to limitations on contributions and benefits are those of title II only. Title I does not deal with limitations on contributions and benefits.

[2] Sole proprietors and partners are "self-employed persons".

[3] A shareholder-employee of a subchapter S corporation is an employee of the corporation who owns more than 5 percent of the Corporation's outstanding stock.

benefits which those individuals could receive under a defined benefit plan. The bill also contains a table (based on certain interest and mortality rates) which will serve as a "guideline regulation."

284 (A–174) (2) Treasury is given authority to replace this table from time to time in years beginning after December 31, 1977, based on changes in mortality and interest rates occurring after 1973.

284 (A–174) (3) The bill also contains technical rules to prevent an individual from establishing a "token plan" early in his career in order to obtain high benefit accruals later in his career.

285 (A–175) (4) A plan which covers owner-employees[4] is not to be permitted to use the defined benefit provisions unless it provides benefits for all participants on a non-integrated basis.

602, 603 (A–172) *Senate amendment.*—

(1) The Senate amendment is essentially similar to the House bill, except that it does not deal with subchapter S corporation shareholder-employees.

605 (A–174) (2) The Senate amendment is essentially the same as the House bill.

(3), (4) No comparable provisions.

286 (A–177) *3. Excess Contributions*

Present law.—Any excess contributions made to a plan on behalf of an owner-employee must be repaid (together with the earnings thereon) within 6 months after the mailing of notice by the Internal Revenue Service; otherwise the plan will become disqualified with respect to that individual. If an excess contribution is willfully made on behalf of an owner-employee, the plan is to become disqualified with respect to the owner-employee, and he is barred from participating in a qualified plan for the next 5 years.

286 (A–177) *House bill.*—The bill repeals the provisions of present law outlined above, and imposes an excise tax of 6 percent on excess contributions to plans for the self-employed. The tax is imposed every year that the excess is outstanding. The tax is to be paid by the employer who maintains the plan.[5]

Senate amendment.—The Senate amendment contains no comparable provisions (and so, under the amendment, excess contributions to H.R. 10 plans would continue to be governed under present law).

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[4] An "owner-employee" is a self-employed person who owns more than 10 percent of either the capital interest or the profits interest in the business.

[5] In the case of a defined contribution plan (for example, a money purchase pension plan), excess contributions include amounts contributed for the employee in excess of the 15-percent, or $7,500 deduction limits on contributions on behalf of self-employed persons. In the case of a defined benefit plan, the tax is imposed where the plan is fully funded at the close of the employer's taxable year, and is imposed upon the amount that has not been deductible for the taxable year or any prior taxable year. Also, in either type of plan, excess contributions include voluntary contributions by owner-employees in excess of the allowable amount of such contributions.

4. Premature Distributions

Present law.—In general, where amounts are distributed under a qualified plan to an owner-employee before he attains age 59½ (except in the case of disability) a tax is imposed equal to 10 percent of the increase in regular taxes due to the distribution.

House bill.—The bill would increase the extra tax to 10 percent of the amount of the premature distribution (instead of 10 percent of the amount of the marginal regular tax on the premature distribution). 292 (A–183)

Senate amendment.—The Senate amendment left the premature distribution provisions of present law essentially unchanged. 624 (A–183)

5. Withdrawing of Voluntary Contributions by Owner-Employees

House bill.—The bill would allow an owner-employee to withdraw his own voluntary contributions to an H.R. 10 plan before retirement without penalty. 292 (A–183)

Senate amendment.—The amendment contains a similar provision. 629 (A–183)

6. Partnership Pooling

House bill.—The House bill contains no provision with respect to partnership pooling.

Senate amendment.—The Senate amendment would permit self-employed individuals, in effect, to pool their contribution limits, so that certain partners could accrue more than their share of retirement benefits, if other partners accrue less, and the overall contribution limits are met. 644 (A–188)

7. Overall Limitation—Coverage of Provisions

House bill.—The bill imposes an overall limitation (described below) on the contributions and benefits which are allowable under qualified pension, profit-sharing, and stock bonus plans and annuities; annuity contract arrangements for employees of charitable, etc., organizations or of public schools (403(b)); and individual retirement accounts and annuities. 321 (A–237)

Senate amendment.—The Senate amendment also imposes an overall limitation which applies in the case of qualified pension, profit-sharing, and stock bonus plans and annuities. The Senate amendment would not apply to individual retirement accounts or 403(b) annuities. 636 (A–237)

8. Overall Limitation—Defined Benefit Plans

House bill.—

(1) Under the bill, in general, the highest annual benefit which can be paid (in the form of a straight life annuity) out of a defined benefit plan to a participant is not to exceed the lesser of (a) $75,000, or 323 (A–240)

(b) 100 percent of the participant's average high-3-consecutive-year compensation from his employer.

329 (A-252) (2) The $75,000 and the 100-percent ceilings are to be adjusted annually under Treasury regulations to reflect cost-of-living increases (in a manner similar to the way old age and survivor's benefits are adjusted under the social security law).

324, 326 (A-241, A-243) (3) In the event of retirement before age 55, the $75,000 limitation is to be scaled down on an actuarial basis (but not below $10,000). However, there would be no reduction in the 100-percent-of-salary limitation.

324 (A-241) (4) In general, the benefits payable under a defined benefit pension plan would not have to be reduced for preretirement ancillary benefits (such as medical, death, and disability), but post-retirement ancillary benefits, such as term-certain annuities, post-retirement death benefits, or a guaranteed payment for a period of years would be taken into account.

324 (A-241) (5) A joint and survivor annuity for the benefit of the participant and his spouse would not be taken into account unless the survivor benefit were greater than the joint benefit.

324 (A-241) (6) Upward adjustments in the benefit schedule would be permitted to reflect any employee contributions to the plan.

326 (A-243) (7) Also, the bill provides a de minimis rule, which would allow the plan to pay an annual retirement benefit of up to $10,000 per annum, notwithstanding the 100-percent limitation, or the required adjustment for certain ancillary benefits, to any employee who has not participated in a defined contribution plan of the employer.

(8) As a further adjustment to the rules described above, the maximum allowable defined benefit would have to be scaled down proportionately for an employee with less than 10 years of service (or part thereof).

Senate amendment.—

605 (A-240) (1) Under the amendment, in the case of a defined benefit pension plan, no deduction is allowable for any contribution which exceeds the amount necessary to fund, from employer contributions and the earnings therefrom, a basic annual benefit (in the form of a straight-life annuity commencing at age 65) in excess of 75 percent of the participant's average high-three-consecutive-year compensation from his employer, taking into account no more than the first $100,000 of compensation per year.

(2) There is no provision for a cost-of-living adjustment.

(3), (4), (5) The otherwise allowable benefit would be adjusted in the event early retirement benefits, or other ancillary benefits were payable. 622 (A–245)

(6) Upward adjustments in the benefit schedule would be permitted to reflect employee contributions.

(7) The amendment does not contain a de minimis provision. 606 (A–241)

(8) In the case of employees who participate in the plan for less than 10 full years, the maximum permissible benefit is to be scaled down proportionately.

9. Overall Limitation—Defined Contribution Plans

House bill.—

(1) Under the bill, the annual additions to a participant's account under a tax-qualified plan are not to exceed the lesser of (a) $25,000 or (b) 25 percent of the participant's compensation from his employer during the year. 326 (A–244)

(2) The "annual additions" are the sum for any year of: (a) the employer's contributions, (b) the lesser of (i) one-half of all employee's contributions or (ii) the employee's contributions in excess of 6 percent of his compensation, and (c) any forfeitures which are added to the employee's account during the year.

(3) The $25,000 limitation is to be adjusted annually for the cost of living.

(4) No corresponding provision.

Senate amendment.—

(1), (2) The employer would be permitted to make deductible contributions sufficient to fund for the employee a pension equal to 75 percent of average high three years of compensation (not in excess of the first $100,000 in any one year). This was done in accordance with a formula and the overall attempt was to make the defined contribution plan limitations and the defined benefit plan limitations as nearly equivalent as possible. 621 (A–244)

(3) No comparable provision.

(4) Also, the Senate amendment provides that tax-excludible contributions to a money purchase pension plan are not to exceed 20 percent of the employee's compensation, and any additional amounts contributed on his behalf must be included in income.

10. Overall Limitation—Combinations of Plans

House bill.—

(1) Where a corporation has two or more plans, the overall ceiling is to be computed, in general, by aggregating similar plans (defined contribution or defined benefit) and reducing the limitation on one type by taking into account the extent to which the permissible limits are utilized under the other. If an 330 (A–253)

employer maintains a defined benefit and a defined contribution plan each plan would be subject to the limit appropriate to that type of plan ($75,000 or 100 percent benefits for the defined benefit plan, $25,000 or 25 percent contributions for the defined contribution plan); in addition, the two plans must be combined in computing the overall limitation.

(2) To achieve this purpose, the bill establishes a formula (to be applied each year to each employee) under which a defined benefit plan fraction for the year is added to a defined contribution plan fraction. The fraction indicates what portion the participant has used of the maximum permitted limit for the kind of plan involved. If the sum of these fractions exceeds 1.4, then one or more of the plans will be disqualified.

335 (A–258) (3) Plans of all corporations, partnerships, or proprietorships which are under common control must be aggregated (using a 50-percent common control test).

Senate amendment.—

606, 612 (A–253) (1), (2) If the corporation has both a defined benefit plan and a defined contribution plan, the maximum benefit payable under the defined benefit plan would have to be reduced in proportion to the amount of the benefit which was funded through the defined contribution plan.

(3) Essentially the same as the House bill.

11. Overall Limitation—Section 403(b) Annuities for Teachers or Employees of Tax Exempt Organizations

328 (A–246) *House bill.*—In general, section 403(b) annuities would be subject to the same limitations as defined contribution plans. However, these annuities would not have to be combined with the qualified plans of the schools for purposes of applying the limitations. Also, the bill would permit catch-up funding of an annuity, so that in a teacher's last year the school could provide make-up contributions for a 4-year period, without regard to the 25 percent limitation.

Senate amendment.—The Senate amendment did not apply to 403(b) annuities.

12. Overall Limitation—Additional Benefits

334 (A–258) *House bill.*—The bill provides that benefits or contributions in addition to those allowable in connection with qualified plans may be paid or accrued on behalf of an employee under a qualified plan, if the contributions of the employer for the purpose of providing such additional benefits are not allowable as a deduction to the employer before they are includible in the gross income of the individual.

388, 419 *Senate amendment.*—The amendment contains no provision to this effect, and prohibits an employer

from maintaining a nonqualified plan, other than a plan providing deferred compensation for executives.

13. Overall Limitation—Special Rule Where Records Not Available

House bill.—The Treasury is authorized to prescribe regulations establishing reasonable assumptions which may be used by the employer in cases where the facts needed to compute the overall limitation are not known. 335 (A–261)

Senate amendment.—The Senate amendment contains no comparable provision.

14. Overall Limitation—Grandfather Clause

House bill.—

(1) The House bill contains a "grandfather clause" for any individual who is, on October 2, 1973, an active participant in a defined benefit plan. 337 (A–265)

(2) An employee who elects to use that provision is permitted to receive an annual benefit which does not exceed 100 percent of the individual's annual rate of compensation on October 2, 1973 (including bonuses).

(3) However, the benefit is not to exceed the annual benefit which would have been payable to the participant on retirement if all the terms and conditions of the plan in effect on October 2, 1973, had remained in effect until the employee's retirement, and his compensation taken into account under the plan for any period after October 2, 1973, had not exceeded his annual compensation on that date.

(4) If, on October 2, 1973, the plan provides for a post-retirement (but not preretirement) cost-of-living adjustment, such an adjustment may also be taken into consideration in determining the allowable benefits for a participant under this provision.

Senate amendment.—The amendment contains no comparable provision.

15. Maximum Deduction Limits—In General

House bill.— 208 (A–63)

(1) The bill provides that an employer may deduct the amount necessary to meet the minimum funding standard (even if this is more than the otherwise allowable maximum deduction).

(2) Also, the bill amends the "normal cost" method of funding so that unfunded past service liabilities may be fully amortized over a 10-year period.

Senate amendment.— 388, 403, 631

The Senate amendment provides as follows:

(1) Same as the House bill.

(2) No comparable provision.

16. Aggregate Deduction Limits—Profit-Sharing and Pension Plans, etc.

Present law.—The contributions allowable as a deduction in a combination profit-sharing and pension plan may not exceed 25 percent of the aggregate compensation to employees covered under the plan. However, where excess contributions are made, these may be carried forward and deducted in succeeding years, and the deduction limit for those years is increased from 25 to 30 percent. Also, under present law, in the case of a profit-sharing plan alone, the limitation on deductible contributions is 15 percent of the aggregate compensation paid to covered employees. In cases where the employer fails to use his full 15-percent allowance, the unused portions may be carried forward and used in succeeding years, up to 30-percent-of-aggregate-compensation limit for the year.

211, 335 (A–67, A–261)

House bill.—The bill continues to allow the carryovers described above, but provides that the ceiling on deductible contributions remains at 25 percent in the succeeding years.

Senate amendment.—The Senate amendment contains no comparable provision.

17. Timing of Contributions

210 (A–66)

House bill.—Contributions by cash basis taxpayers (as well as accrual basis taxpayers as under present law) which are made by the time for filing the employer's tax return for the year in question may be treated as paid in the year in question.

633 (A–66)

Senate amendment.—Substantially the same as the House bill.

18. Effective Dates

336 (A–191, A–263)

House bill.—(1) In general, the amendments with respect to H.R. 10 plans, including the provisions increasing the amount of the deductible contributions which may be made on behalf of the self-employed, are to apply to taxable years beginning after December 31, 1973.

(2) The rules facilitating the use of defined benefit plans for the self-employed, as well as the rules modifying the treatment of excess contributions and the taxation of premature distributions, are to apply to taxable years beginning after December 31, 1975.

(3) The new rules with respect to corporate limitations are to apply to contributions made or benefits accrued in years beginning after December 31, 1975.

(4) The effective dates for the new maximum deduction rules are the same as the effective dates for the new funding rules (see Part One, Funding, *Effective Dates*, Item 29).

Senate amendment.—(1), (2), and (3) Generally, the provisions under the amendment are to take effect in years beginning after December 31, 1973. 615, 625 (A–192, A–263)

(4) The effective dates for the new maximum deduction rules are generally the same as the effective dates for the new funding rules. However, the provision regarding the timing of contributions takes effect on January 1, 1974, as does the provision allowing a deduction to the extent of the required minimum funding.

EMPLOYEE SAVINGS FOR RETIREMENT

A. Individual Retirement Accounts

1. Deductions for Contributions to Individual Retirement Accounts, etc.

House bill.[1]— 294 (A–193)

(1) An individual who does not participate in a qualified plan, a government plan, or a section 403 (b) annuity program during the year is to be allowed a maximum retirement savings deduction of up to $1,500 per year, or 20 percent of his compensation includible in gross income, whichever is less, for contributions to an individual retirement account or for the purchase of an individual retirement annuity or a qualified retirement bond.

(2) This deduction is available whether or not the taxpayer itemizes his other deductions.

(3) The account may be established by the individual, his employer, or his labor union.

(4) If both husband and wife are eligible, each can make contributions to his or her own individual retirement account.

Senate amendment.— 577 (A–193)

(1) An individual who was not a participant in a qualified plan, a section 403(b) annuity, or a government plan, would be permitted to deduct up to $1,000 a year (but not in excess of earned income), or (where the employer does not contribute) 15 percent of earned income up to a maximum deductible contribution of $1,500 for contributions to an individual retirement account or for the purchase of an individual retirement annuity or bond.

(2) Same as the House bill.

(3) The individual retirement account may be established by the individual or by his employer (but not by his labor union).

(4) Similar to the House bill.

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[1] The House bill provisions relating to employee savings for retirement are those of title II only. Title I does not deal with employee savings for retirement.

297 (A–198)

2. Individual Retirement Accounts—Requirements

House bill.—(1) Under the bill, an individual retirement account is to be a domestic trust (or custodial account) created or organized under a written instrument for the exclusive benefit of an individual or his beneficiaries. Banks may be trustees. In addition other persons may serve as trustees if they satisfy the Internal Revenue Service that the trust will be administered in accordance with law.

(2) The governing instrument is to provide that the trustee will not accept more than $1,500 per year on behalf of any individual (except in the case of rollovers), and the individual's interest in the account must be nonforfeitable, without exception.

(3) The balance in an individual retirement account may generally be invested in any assets that are acceptable investments for a qualified plan, but the assets are not to be commingled with other property except in a common trust fund.

(4) No assets of the account may be invested in life insurance contracts (however, contributions may be invested in annuity contracts issued by life insurance companies).

(5) The trust instrument also is to provide that the entire interest of a participant will be distributed by the end of the year in which he reaches age 70½ or that distribution will begin by that time and continue at least ratably over his lifetime (or the lives of the participant and his spouse).

308, 314 (A–217)

(6) The bill provides that the trustee of an individual retirement account (or issuer of a retirement annuity) is to report annually to the Secretary of the Treasury regarding contributions to the account or annuity and such other matters as may be prescribed by regulations. A $10 penalty is provided for each violation of the reporting requirements, unless the violation is due to reasonable cause.

Senate amendment.—Many of the requirements of the Senate amendment with respect to the individual retirement accounts are quite similar to those of the House bill; however, there are some differences in the approach of the two bills with respect to specific points above, as follows:

581 (A–198)

(2) Under the governing instrument, contributions to the account cannot exceed amounts that are deductible under the retirement savings deduction.

589 (A–209)

(4) The amendment does not prohibit investment of the assets in a life insurance contract. However, any contribution to the account, or any income of the account which is applied to the purchase of life insurance protection under any retirement income, endow-

ment, or other life insurance contract will constitute income to the individual.

(6) With respect to reporting, the amendment provides generally that an individual retirement account is to be subject to the provisions relating to returns by exempt organizations (sec. 6033) and fiduciary returns required to be filed in connection with certain trusts, annuity and bond purchase plans (sec. 6047). 586, 644 (A–217)

3. Individual Retirement Annuities—Requirements

House bill.—(1) Under the bill, retirement savings may also be invested in annuity contracts, called individual retirement annuities. 299 (A–202)

(2) This is to be an individual annuity contract that is issued by an insurance company in the name of the participant, and the participant's rights in the contract are to be nonforfeitable.

(3) The annual premium is not to exceed $1,500.

(4) The contract is to be nontransferable and is not to be used as security for a loan.

(5) The prohibitions on life insurance elements and requirement of distribution by age 70½ are essentially the same as apply to individual retirements accounts.

Senate amendment.—Under the Senate amendment, the requirements for a retirement annuity are the same as those for an individual retirement account, and generally these requirements are similar to those of the House bill. However, as a matter of form, under the Senate amendment an annuity contract is one permitted type of investment under an individual retirement account. 580 (A–198)

There is no prohibition against the use of a life insurance contract and no prohibition against using the contract as security for a loan. In either of these events, the individual is to be treated as having income to the extent of the premiums applied toward life insurance protection, or the portion of the annuity contract pledged as security. 587, 589 (A–209, A–211)

4. Employer- and Union-Sponsored Accounts

House bill.—(1) Employers and labor unions are to be able to establish individual retirement accounts for their members. In this case, the same rules that govern individual retirement accounts generally are to apply to employer or union-established accounts. 301 (A–203)

(2) An employer or union may establish a single individual retirement account trust for a number of employees or members. The assets of the trust may be commingled for investment purposes. However, the trust must provide a separate accounting for each individual participant's interest in the trust. These trusts

are subject to the rule (applicable under present law to qualified plans) that the assets are to be held exclusively for the benefit of the participants or their beneficiaries.

(3) Regardless of whether the contributions are made by the employer or the employee, these amounts constitute income to the employee (which may, however, be deductible, if the requirements of the bill are met). This means the amounts are subject to FICA and FUTA taxes, but are not subject to withholding if it is reasonable for the employer to believe that the employee will be entitled to receive a deduction for the contribution.

581, 584 (A–198, A–204)

Senate amendment.—(1) The Senate amendment does not contain a provision allowing the establishment of union-sponsored retirement accounts.

(2) Employers are permitted to establish individual retirement accounts for their employees, and the assets of these accounts may be commingled for investment purposes.

(3) Amounts contributed by the employer are tax excludable to the employee and are not to be subject to FICA and FUTA taxes.

(4) If the employer contributes to the account, the maximum contribution is limited to $1,000 a year.

(5) Separate records must be maintained for employer and employee contributions, but the interest of the employee in all contributions must be nonforfeitable.

(6) Apart from these rules, employer-sponsored retirement accounts are subject to the same rules which apply under the Senate amendment to all other retirement accounts.

5. Taxation of Distributions—In General

302 (A–206)

House bill.—(1) Generally, the proceeds from an individual retirement account (individual retirement annuity and qualified retirement bond) are to be fully taxable to the individual when distributed.

(2) The amounts distributed from a retirement account, etc., are not to be eligible for capital gains treatment, and the special averaging rules applicable to lump-sum distributions (under sec. 72) also are not to be available.

(3) However, the individual is permitted to use the general averaging rules (sec. 1301).

(4) For purposes of the estate and gift taxes, the amounts in individual retirement accounts, etc., are not to be excluded from tax (secs. 2039(c) and 2517).

587 (A–206)

Senate amendment.—In general, the rules with respect to taxation of distributions are the same.

6. Premature Distributions, etc.

House bill.—(1) In the event of a premature distribution (or deemed distribution) from the account, before the individual reaches age 59½, the individual's income tax is to be increased by 10 percent of the total amount of the distribution that is included in his gross income for the taxable year. 307 (A–213)

(2) The tax on premature distributions is not to apply in the case of distributions because of death or disability, or to distributions of excess contributions made within the time for filing the individual's tax return for the year in which the excess contributions occur.

(3) If an individual borrows money from an individual retirement account, this would generally constitute a prohibited transaction, the entire account would then be disqualified, and the participant is then to be taxed as if he had received a distribution of the fair market value of all the assets in his account. On the other hand, if he borrows money, using his interest in the account as security, the portion used as security is to be treated as a distribution from the account to the individual.

(4) In the case of individual retirement annuities the bill prohibits the owner of the contract from borrowing money from the insurance company issuing the contract, or otherwise using the contract as security for a loan. If borrowing does occur, the contract is to lose its qualification as an individual retirement annuity, and the individual is to include in income for that year the fair market value of the contract (determined as of the first day of that year). If the annuity contract is sold, exchanged, or hypothecated, the same consequences are to occur.

Senate amendment.—(1) The additional income tax on premature distributions is 30 percent of the distribution (rather than 10 percent, as under the House bill). 587, 589 (A–213)

(2) The penalty is not imposed in the event of distributions on account of death or disability. Also the tax is not imposed on any refund of excess contributions which were not willfully made (whereas the House bill allows a tax-free refund only if the refund occurs before the due date for filing the relevant tax return).

(3) If an individual borrows money, pledging his interest in the account or annuity as security, the portion pledged as security is to be treated as a distribution from the retirement account to the individual. Also, any contribution to an individual retirement account, or any income of the account, applied to the 590 (A–209)

purchase of life insurance protection under any retirement income, endowment or other life insurance contract also will constitute income to the individual. These transactions would not disqualify the account, but distributions in the form of borrowing prior to age 59½ would be subject to the 30-percent penalty tax.

(4) No comparable provision.

7. Taxation of Individual Retirement Accounts, etc.

304 (A–210) *House bill.*—(1) Generally an individual retirement account is to be exempt from Federal tax.

(2) The unrelated business income of the account, if any, is to be subject to tax under section 511.

(3) The bill also applies the existing prohibited transaction rules (sec. 503(b) and sec. 503(g)) to individual retirement accounts.

(4) However, in the case of a union or employer-sponsored account, where there is an individual retirement account trust covering more than one employee, only the employee who engages in the prohibited transaction will be penalized (i.e., only his account will be disqualified).

(5) If the employer is the party engaging in a prohibited transaction, the participants are not penalized under the bill, but the employer is to lose all deductions for compensation to the extent of the contributions to the retirement account in his taxable year in which the prohibited transaction occurs, and for all prior open years.

Senate amendment.—(1), (2) Same as House bill.

(3), (4), and (5) The accounts would also be subject to the Senate amendment rules with respect to fiduciary responsibility (which differ substantially from the rules of present law with respect to prohibited transactions). A party in interest who participates in a violation of these rules is to be subject to an excise tax.

311 (A–222) *8. Excess Contributions*

House bill.—(1) In general, no contributions in excess of the deductible limits may be made to an individual retirement account, etc.

(2) Where such contributions do occur (through inadvertence or otherwise) a retirement savings deduction is not allowed for the excess.

(3) If excess contribution, plus earnings on the excess, are distributed to the individual no later than the time for filing the employee's tax return for the year in question, the excess contribution is not taxable (see point (4)) but the earnings, if any, are taxable to the participant.

(4) If a timely distribution of the excess contribution is not made, a nondeductible excise tax equal to 6 percent of the excess contributions is imposed for that year, and each successive year so long as there is an excess. The tax is payable by the individual on whose behalf the excess contribution was made.

(5) The individual may withdraw the excess contribution after the due date for filing his return, and eliminate the 6 percent excise tax for future years. However, the withdrawn amounts will be subject to tax (since the individual's basis in the account is always zero) and will also be subject to a 10 percent additional tax if the withdrawal constitutes a premature distribution (before age 59½).

(6) No retirement savings deduction is to be allowed for contributions made during or after the year in which the individual attains age 70½, and all such contributions are to be treated as excess contributions. 296 (A–196)

Senate amendment.—(1), (2) Similar to the House bill. 584 (A–222)

(3) Excess contributions which are not made willfully are to be refunded to the individual (with earnings) within six months after notice of the excess contribution is sent by the Internal Revenue Service.

(4) If the excess contributions are not repaid, the account is to be disqualified for that year and all future years. In this case, the balance in the account would generally constitute income to the individual.

(5) If it is found that the excess contributions are made willfully, the taxpayer's interest in all individual retirement accounts is to be distributed to him and he is not to be permitted to establish another retirement account for a period of five years.

(6) Similar to the House bill.[2]

9. Excise Tax on Excess Accumulations 313 (A–224)

House bill.—After the participant has attained age 70½, an excise tax of 50 percent is imposed on the amount, if any, by which the amount of the distributions from the account failed to equal the minimum distribution (as determined under regulations) required for the year in order to satisfy the age 70½ payout requirements.

Senate amendment.—After age 70½, an excise tax of 10 percent a year is imposed on that proportion of an individual's account (valued as of the beginning of the taxable year) which equals the ratio between the amount which was required to be distributed dur- 592 (A–224)

[2] Generally, an individual would be permitted to receive a deduction for contributions to only one individual retirement account in any one taxable year, except where the employee enters or leaves employment during the year with an employer who contributes to his individual retirement account.

ing the year, and the amount which was actually distributed.[3]

10. Tax-free Rollovers

House bill.—

302,317 (A–206, A–231)

(1) Money or property may be distributed from a tax-qualified plan or from an individual retirement account to the plan participant, on a tax-free basis, if this same money or property is reinvested by the participant within 60 days in a qualifying individual retirement account.

(2) In the case of distributions from a qualified plan, the distribution must occur on account of the individual's separation from service and within one taxable year to qualify for this treatment. Additionally, the participant must receive his entire interest in the plan.

(3) Also, in the case of distributions from a qualified plan, the amount contributed to the individual retirement amount is to be the amount received, less the amount contributed to the plan by the individual as an employee contribution.

(4) Tax-free rollovers between individual retirement accounts may occur only once every three years.

435, 591 (A–206, A–231)

Senate amendment.—The provisions of the Senate amendment are as follows:

(1) Substantially the same as the House bill. In addition, however, reinvestments may be made on a tax-free basis in another qualified plan or in the central portability fund. Furthermore, amounts equal to the employee's own voluntary nondeductible contributions to the plan need not be reinvested.

(2) Substantially the same as the House bill. However, the tax-free rollover is available only with respect to complete distributions from a plan that occur within 12 months after termination of employment.

(3) Amounts equal to the employee's own voluntary, nondeductible contributions to the plan may be reinvested, but need not be so.

(4) Same as the House bill.

11. Qualified Retirement Bonds

309 (A–218)

House bill.—(1) Deductible employee savings may also be invested in a special retirement bond to be issued by the Federal Government. The bonds are to be issued under the Second Liberty Bond Act and are to provide for the accumulation of interest until the time of redemption.

[3] For example, if an account had a value of $1,000, and $100 was required to be distributed in order to satisfy the age 70½ payout requirements, and $10 was distributed, the penalty tax would equal $90 (90/100ths, or 90 percent of the required distribution was not made: 90 percent of $1,000 equals $900 and 10 percent of this amount equals the penalty tax—$90). By contrast, under the House bill, a tax of $45 would be payable ($100 required distributions minus $10 of actual distributions equals $90, and 50 percent of this amount is $45).

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(2) The bonds are to be issued in the name of the individual on whose behalf they are purchased, and cannot be transferred or pledged under any circumstances (except in the event of death or incompetency).

(3) The bonds generally may be cashed only after the individual has reached the age of 59½ years, or if he becomes disabled.

(4) However, the bond may be redeemed within 12 months of its purchase without penalty (and without payment of interest) and in this case the individual is not entitled to a deduction for the contribution.

(5) The bonds are to cease to bear interest when the individual reaches age 70½ and the individual is also required to take any of the bonds he is still holding into income even if he does not cash them in.

(6) If the owner dies, the bonds cease to bear interest five years after his death.

(7) When the bonds are redeemed, the full proceeds of the bonds (including interest) constitutes income to the individual (except when the bond is redeemed within 12 months of its purchase). 596 (A–218)

(8) However, this income could be treated under the general averaging provisions of the tax law (sec. 1301).

Senate amendment.—The provisions are essentially the same.

12. Other Rules

House bill.—(1) The House bill provides that the proceeds of individual retirement accounts, annuities and bonds are to constitute retirement income for purposes of the retirement income credit. 315 (A–227)

Senate amendment.—(1) Similar to the House bill. 599 (A–227)

(2) Also, the amendment provides that contributions to a retirement account may not be used to create or increase a net operating loss. 638 (A–234)

(3) If a retirement account or annuity is transferred pursuant to a divorce settlement, the transfer is not to be taxable under the amendment. 586 (A–216)

13. Effective Dates

House bill.—The deduction for retirement savings is to be available for taxable years beginning after December 31, 1973. 321 (A–236)

Senate amendment.—Same as the House bill.

B. *Salary Reduction Plans and Other Matters* 602 (A–236)

1. Salary Reduction Plans and Cash and Deferred Profit-Sharing Plans

Present law.—Generally, under present law, an employee is not allowed to deduct amounts which he contributes from his own funds to a retirement plan.

While an employer's qualified plan may allow employees to contribute their own funds to the plan, no deduction is allowed for these contributions. However, the income earned on employee contributions to an employer's qualified plan is not taxed until it is distributed.

In the case of a salary reduction plan or a cash or deferred profit-sharing plan, however, the Internal Revenue Service has permitted employees to exclude from income amounts contributed by their employers to the plan, even where the source of these amounts is the employees' agreement to take salary or bonus reductions or forgo salary increases. In the case of a cash or deferred profit-sharing plan, the employee generally has the election to take a bonus currently in cash or have it deferred by payment into the plan. In the case of a salary reduction plan, the employee generally agrees with his employer to reduce his salary or forgo a salary increase which is contributed into a pension plan for his benefit. In either case, if the plan met certain nondiscrimination requirements, the Internal Revenue Service in the past had taken the position that, under certain circumstances, the payment into the plan would be treated as an employer contribution, not taxable to the employee until benefits were received from the plan. The maximum amount that could be so treated under a salary reduction plan generally was 6 percent of compensation.[4]

On December 6, 1972, the Service issued proposed regulations (37 Fed. Reg. 25938) which would change this result in the case of qualified pension plans by providing that amounts contributed to such a plan in return for a reduction in the employee's basic or regular compensation, or in lieu of an increase in such compensation, will be considered to have been contributed by the employee and consequently will be taxable income to the employee.

The proposed regulations would not affect the tax treatment of contributions to certain qualified profit-sharing plans, where the contributed amounts could be received as a bonus; however, it was indicated that there would be reconsideration of the rulings permitting exclusion of such profit-sharing contributions. (Rev. Rul. 56–497, 1956–2 C.B. 284; Rev. Rul. 63–180, 1963–2 C.B. 189; Rev. Rul. 68–89, 1968–1 C.B. 402.) Public hearings have been held on these proposed reg-

[4] In the case of employees of tax-exempt charitable, educational, religious, etc., organizations and employees of public educational institutions, a specific statutory provision provides for employer contributions of up to 20 percent of compensation, times years of service, reduced by amounts previously contributed by the employer for annuity contracts on a tax excluded basis to the employees (sec. 403(b)). The regulations under the statute allow the employer contributions to be made under these salary reduction plans. Antidiscrimination provisions that apply generally to qualified plans do not apply to those tax sheltered annuities. Neither the bill nor the amendment affect the tax treatment of these contributions (although limits are applied to them under the House bill).

ulations but regulations in final form have not yet been issued.

House bill.—(1) Under the House bill, the proposed Treasury regulations with respect to salary reduction plans are to be withdrawn. 350 (A–280)

(2) No proposed regulations are to be issued in this area before January 1, 1975.

(3) At that point, if Congress has not acted, Treasury may, at its discretion, issue a new set of proposed regulations, which may or may not be similar to the regulations which are to be withdrawn. However, if regulations are issued, they may not become final prior to March 16, 1975, and may not be retroactive for income tax purposes prior to January 1 of that year.

(4) Until new regulations are issued in final form, the law is to be administered in accordance with the legal principles which were applied before January 1, 1972.

(5) Cash or deferred profit-sharing plans are to be treated in a similar manner. During the period until new regulations are issued in final form, the qualified status and the tax treatment of contributions to such plan is to be governed in accordance with the principles set forth in existing revenue rulings. However, if Congress does not act, Treasury may change its pre-1972 positions on the law in this area by regulations, so long as such changes do not become final before March 16, 1975, and are not retroactive prior to January 1, 1975.

(6) For purposes of the social security taxes and the Federal withholding taxes, the regulations are not to be retroactive.

(7) So-called "cafeteria plans", under which the employee may have a choice between cash and certain fringe benefits, some of which may be nontaxable, are also to be governed under pre-1972 principles during this period.

Senate amendment.—Contributions made after December 31, 1973, to a qualified plan in return for a reduction in the employee's compensation or bonus, or in lieu of an increase in such compensation or bonus, would be treated for Federal tax purposes as nonexcludible employee contributions to the plan. 639 (A–280)

2. Amounts Designated as Employee Contributions

House bill.—(1) To clarify present law, the bill provides that amounts contributed to a qualified plan after the date of enactment are to be treated as employee contributions if they are designated as employee contributions under the plan. 220 (A–83)

(2) This rule would not apply to government "pick-up" plans, however, where the contribution is

paid by the government, with no withholding from the employee's salary, and these amounts would be treated as employer contributions, no matter how designated under the plan.

639 (A–83) *Senate amendment.*—(1) The rule is the same as to designated contributions (except that the rule applies to taxable years beginning after December 31, 1973).

(2) There is no rule providing an exception for government pick-up plans.

3. Integration With Social Security

House bill.—As discussed above, title I and title II of the House bill provide that plans may not use increases in social security benefit levels to decrease plan benefits in the case of retirees, or individuals who separate from service prior to retirement. (See Part One, Vesting, item 20.) In addition, the Ways and Means Committee report (page 29) proposes a study, by the committee, of the issues involved in the integration of private pension plans with the social security system and directed that no further integration of social security and pension benefits should be allowed by the Internal Revenue Service, at least until June 30, 1975.

Senate amendment.—No comparable provision.

LUMP-SUM DISTRIBUTIONS

1. Post-1973 Portion—Ordinary Income—Averaging; Pre-1974 Portion—Long-Term Capital Gains

House bill.[1]—

344 (A–273) 338 (A–267) 338 (A–267) 338 (A–267) 346 (A–275) 344 (A–273)

(1) A lump-sum distribution attributable to post-1973 plan participation is to be taxable as ordinary income—

(a) without regard to the taxpayer's other income (i.e. in a "separate basket");

(b) averaged over 10 years; and

(c) the tax is to be computed using the tax schedule for unmarried individuals (whether or not the taxpayer is married).

(2) That portion of the lump-sum distribution that is attributable to pre-1974 participation in the plan is to be taxed as long-term capital gain.

(3) Where the participant has service both before 1974 and after 1973, then the amount attributable to the post-1973 service is the total taxable distribution times a fraction, the numerator of which is calendar years of active participation after 1973 and the denominator of which is total years of active participation.

617, 619 (A–267, A–275) *Senate amendment.*—The Senate amendment is essentially the same, except that the averaging is over 15 years.

[1] The House bill provisions on lump-sum distributions are those of title II only. Title I does not deal with lump-sum distributions.

2. Definition of Lump-Sum Distribution

House bill.— 341 (A–270)

(1) The bill amends present law to permit a lump-sum distribution to be made to a common-law employee after he attains age 59½, even though he has not left his employment. (Under present law, the age 59½ rule applies only to self-employed persons.)

(2) The entire balance of the employee's account in the plan must be distributed in order for the distribution to receive lump-sum treatment. For this purpose, 343 (A–272)

(a) all trusts which are part of a plan are to be treated as a single trust, and

(b) all plans of a given kind (i.e., all pension plans or all profit-sharing plans or all stock bonus plans) maintained by the employer are to be treated as a single plan.

(Under present law, a distribution generally is treated as a lump-sum distribution if it clears the employee's balance in a single trust, even though there are other trusts in that plan and even though that employee is in several plans maintained by the same employer.)

Senate amendment.—No comparable provisions.

3. Multiple Lump-Sum Distributions in One Taxable Year

House bill.—A taxpayer who wishes to use the special averaging and capital gains treatment described above for one lump-sum distribution, must use that treatment for the aggregate of the lump-sum distributions be receives in that taxable year. 342 (A–271)

Senate amendment.—No comparable provision, but the intent is the same.

4. Aggregation of Distributions over 6 Years. 339 (A–268)

House bill.—

(1) In determining the correct tax brackets on the lump-sum distributions to a recipient during the current taxable year, all lump-sum distributions to that recipient during the 5 prior taxable years are to be aggregated.

(2) For this purpose, only distributions in taxable years after 1973 are to be taken into account.

Senate amendment.—The Senate amendment is substantially the same as the House bill except that the Senate amendment does not restrict the aggregation requirement to distributions in post-1973 taxable years. 618 (A–268)

5. Treatment of Distributions of Annuity Contracts

House bill.—

(1) Although a distributed annuity contract itself is not taxable, the value of the annuity contract is to be 342 (A–271)

included in the aggregation computation in order to determine the tax rate on a taxable lump-sum distribution.

342 (A–269) (2) For purposes of the aggregation computation, the value of the annuity contract is to be its fair market value.

619 (A–269) *Senate amendment.*—The Senate amendment is essentially the same, except that the value of the annuity contract to be taken into account is the cash surrender value of the contract on the date of distribution.

6. Number of Elections

340 (A–271) *House bill.*—The special averaging treatment may be elected freely until the employee reaches age 59½, after which only one election may be made with respect to that employee.

Senate amendment.—The Senate amendment does not have an election procedure. As a result, it makes the above-described special averaging and capital gains treatment mandatory for lump-sum distributions and does not limit the number of times this special treatment may be used.

7. Distributions to Trusts

342 (A–271) *House bill.*—(1) A trust may elect the special averaging and capital gains treatment only if (1) the use of the trust does not affect the includibility of the distribution in the employee's gross estate, and (2) the trust is the sole recipient of the entire balance to the credit of the employee.

340 (A–269) (2) In general, an employee must be regarded as the recipient, for purposes of the requirement of aggregation of all lump-sum distributions in a period of six taxable years, even if he or she causes the distribution to be made to a trust, if the employee retains such an interest in the trust as would require his taxation as the substantial owner of the trust under the present tax rules, even if the grantor of the trust is technically the employer or the plan.

Senate amendment.—No comparable provisions.

8. Lump-Sum Distributions to the Self-Employed

344 (A–273) *House bill.*—The same 10-year ordinary income averaging may be elected for distributions on account of plan participation by self-employed persons as may be elected on account of the participation of regular employees. (Under present law, lump-sum distributions to self-employed persons are taxed under special 5-year averaging provisions.)

Senate amendment.—No comparable provision.

9. Whether an Employee Is To Be Taxed as Self-Employed

House bill.—The House bill provides much the same averaging treatment for a lump-sum distribution to a self-employed individual as it applies to a regular employee. (Accordingly, it does not contain any provision declaring whether an individual who has participated in a plan as both a regular employee and as a self-employed individual is to be taxed, upon receiving a lump-sum distribution, as a regular employee or as self-employed.) 344 (A–273)

Senate amendment.—The Senate amendment provides that a participant is to be taxed as self-employed if he was self-employed more than half the years of his plan participation. 616 (A–266)

ADMINISTRATION AND ENFORCEMENT

1. Tax Court Declaratory Judgment Proceedings

Both the House bill and the Senate amendment provide a procedure for obtaining a declaratory judgment with respect to the tax-qualified status of an employee benefit plan. Under both bills, jurisdiction to issue such declaratory judgments is given to the United States Tax Court. The remedy is available only if (1) the Internal Revenue Service has issued an adverse determination as to the status of the plan or (2) the Service has failed to issue a determination but the petitioner has exhausted his administrative remedies in the Service. 273, 554 (A–157)

House bill.—

(1) The House bill does not make specific provision for burden of proof; it is contemplated that such matters will be determined by the Tax Court under its existing rule-making authority.

(2) Under the House bill, the declaratory judgment provisions are to take effect on January 1, 1978. 278 (A–164)

Senate amendment.—

(1) The Senate amendment provides that the burden of proof is to be on the petitioner (the employer, plan administrator, or employee) as to those grounds set forth in the Internal Revenue Service determination; the burden of proof is to be on the Service as to any other grounds that the Service relies upon in the court proceeding (i.e., if the Service does not issue a determination, then the Service is to have the burden of proof as to every ground upon which it relies). 559 (A–163)

(2) The Senate amendment provides that the Tax Court declaratory judgment provisions are to take effect on January 1, 1975. 560 (A–164)

2. Administering Office in Internal Revenue Service

278, 357 (A–165) Both the House bill and the Senate amendment establish an Office of Employee Plans and Exempt Organizations in the Internal Revenue Service, headed by an Assistant Commissioner of Internal Revenue, to administer the tax provisions with regard to employee benefit plans and other exempt organizations.

House bill.—

(1) The House bill does not provide for the compensation schedule of this Internal Revenue Service office.

279 (A–168) (2) The House bill authorizes appropriations for this office in the amounts of $20 million for fiscal 1974 and $70 million for each fiscal year thereafter. The House bill neither imposes nor earmarks any specific revenue source for this authorization of appropriation.

279 (A–167) (3) Provisions regarding the new office are to take effect 90 days after enactment of the Act.

Senate amendment.—

358 (A–165) (1) The Assistant Commissioner in charge of this office is to be classified as GS–18 and is to be in addition to the number of positions at that level otherwise authorized for the Internal Revenue Service. Also, the amendment authorizes an additional 20 positions in the level of GS–16 and 17.

359, 560 (A–168) (2) The Senate amendment authorizes appropriations for each of the fiscal years 1974, 1975, and 1976 in the amount of $35 million plus one-half of the private foundation investment income taxes (under sec. 4940). For each fiscal year thereafter, there is authorized appropriations of amounts equal to a new excise tax on employee benefit plans plus half of the private foundation investment income tax collections. The new tax would be $1 per participant per plan per calendar year, beginning with 1974.

(3) Since no effective date is specified under the Senate amendment, the provisions regarding the new office would take effect on the date of enactment of this Act.

3. Reporting and Disclosure—Internal Revenue Service

a. Reports Required[1]

263 (A–142) *House bill.—*

(1) The bill restates present law by requiring employers (or plan adminstrators) who establish or maintain funded deferred compensation plans to file annual information returns.

[1] The reporting and disclosure provisions with respect to the Internal Revenue Service appear only in title II of the House bill.

(2) Also, the bill provides that the Secretary of the Treasury may provide reporting requirements with respect to the retirement savings deduction and individual retirement accounts, etc.

Senate amendment.—Substantially the same as the House bill. 641 (A–142)

b. Sanctions for Failure To File 265 (A–146)

House bill.—

(1) Sanctions (in the form of an addition to tax) for failure to file annual plan information returns are established.

(2) The addition to tax is to be $10 for each day that a return is late, up to a maximum of $5,000 for any one failure to file.

(3) This addition to tax will not be owed if failure to file is due to reasonable cause.

Senate amendment.—Same as the House bill. 644 (A–146)

c. Disclosure

House bill.— 246 (A–120)

(1) The bill opens to public inspection applications to the Internal Revenue Service for a determination that a plan is qualified and for a determination that the trust under the plan is exempt (including papers submitted in support of the application).

(2) Determination letters issued by the Internal Revenue Service dealing with qualification or exemption of plans and trusts are to be open to public inspection.

(3) Annual information returns with respect to qualified plans are also to be opened to public inspection.

(4) However, under the bill, information contained in these papers and documents from which the compensation of any participant may be ascertained is not to be open to public inspection.

Senate amendment.—

(1) Same as the House bill, except applications are not to be open for public inspection for plans where the employer has less than 26 employees. 642 (A–120)

(2) No comparable provision.

(3) Same as House bill.

(4) No comparable provision.

(5) In addition, certain information returns are to be open for inspection by proper officers of the Pension Benefit Guarantee Corporation, in order that the Corporation can properly administer the insurance program.

d. Effective Dates

House bill.—

249 (A–122) (1) The provisions of the bill making applications, determination letters, and other documents open to public inspection are to go into effect for applications filed or documents issued after December 31, 1975.

273 (A–156) (2) The provisions of the bill requiring annual returns to be filed are to become effective for plan years beginning after the date of enactment.

321 (A–236) (3) The provisions regarding reporting with respect to individual retirement accounts are to become effective on January 1, 1974.

648 *Senate amendment.*—The provisions are to go into effect on January 1, 1974.

MISCELLANEOUS

243 (A–115) *1. Trustees of H. R. 10 Plans*

House bill.—Trustees of H.R. 10 plans may be banks or other persons who satisfy the Secretary of the Treasury that they will hold assets in a manner consistent with the requirements of the Internal Revenue Code.

603 (A–115) *Senate amendment.*—Substantially the same as the House bill.

2. Custodial Accounts

Present Law.—Plan assets may be held in a custodial account if (1) the custodian is a bank (as defined in section 581), and (2) the plan funds are invested only in mutual funds or annuity, endowment, etc., contracts issued by an insurance company.

244 (A–116) *House bill.*—

(1) Custodians may be banks or other persons who satisfy the Secretary of the Treasury that they will hold the assets in a manner consistent with requirements of the Internal Revenue Code.

(2) The provision would not impose limitations on the type of assets that could be held in a custodial account.

629 (A–116) *Senate amendment.*—Same as the House bill.

3. Section 403(b) Plan Investments in Mutual Funds

244 (A–117) *House bill.*—Assets of section 403(b) plans may be invested in mutual funds (in addition to annuity contracts as under present law).

630 (A–117) *Senate amendment.*—Same as the House bill.

246 (A–119) *4. Federal Credit Unions*

House bill.—Federally insured credit unions are included in the definition of "bank" in determining the

type of financial institutions which can serve as plan custodians or trustees.

Senate amendment.—No comparable provision.

5. Certain Puerto Rican Pension Plans

House bill.—A trust which is part of a pension, profit-sharing, or stock bonus plan, all of the participants of which are residents of Puerto Rico, is to be treated (for years after 1973) as though it were an exempt U.S. employee benefit trust if the trust is exempt from income taxes under the laws of Puerto Rico. 249 (A–124)

Senate amendment.—No camparable provision.

6. Deduction for Severance Payments Required by Foreign Law

Present law.—Contributions to a nonqualified trust are deductible by the employer when the contribution is includable in the income of the participant, but only if separate accounts are maintained under the plan for each participant.

House bill.—The House bill provides that for years after 1973 the employer may deduct contributions for severance payments for nonresident alien employees, even though separate accounts are not maintained (and even though the contributions which are included in income by the aliens are not subject to U.S. tax) if three conditions are satisfied: 249 (A–125)

(1) The employer is engaged in a trade or business in a foreign country;

(2) The employer is required by foreign law to make the severance payments, based on periods of service;

(3) The employer establishes a U.S. trust to fund these payments.

Senate amendment.—The Senate amendment contains no comparable provision.

7. Remedial Retroactive Plan Amendments

House bill.—Retroactive plan amendments which correct a plan that does not meet the requirements for tax qualification are allowed to cure a new plan or to cure an amendment to an existing plan. Such retroactive changes can be made within the time for filing the employer's tax return for the year in which the plan was put into effect or in which the amendment was adopted (or such later time designated by the Secretary of the Treasury). 258 (A–135)

Senate amendment.—Same as the House bill. 638 (A–135)

8. Rules for Certain Negotiated Plans

Present law.—Present law provides special rules for contributions to a plan established before 1954 under an agreement between a union and the United

States Government. Under this provision, contributions are not deductible under the general deferred compensation provisions of the code but are deductible solely as general trade or business compensation expenses. Such a plan must provide both welfare and pension benefits.

351 (A–282) *House bill.*—In order to facilitate conversion of the pension benefits plan into a regular tax-qualified pension plan, the House bill would provide the following amendments:

(1) people who technically were self-employed individuals before July 1, 1974, are permitted to have their service under the plan credited as though they were regular employees;

(2) no such self-employed individual is permitted to establish a separate H.R. 10 plan for service covered under the regular plan;

(3) people who were plan participants before July 1, 1974, are to be treated as employees of participating employers even though in some circumstances those employers do not officially become participating employers until July 1, 1975; and

(4) a code provision relating to deductions incurred by certain membership organizations in transactions with members is not to apply to the trust described above.

These provisions generally are to apply to taxable years ending on or after June 30, 1972.

Senate amendment.—The Senate amendment has no comparable provision.

Labor Day, 1974

Statement by the President. September 2, 1974

I salute the working men and women of America on the 80th anniversary of labor's special day. Their strength of mind, heart, and hand continues to guide our destiny.

As American society has changed in modern times, the role and needs of labor have also changed. A need for organization arose and was filled.

Today, therefore, we salute not only the 93 million men and women in the labor forces but also the organizations which represent labor so well. The goals of those organizations were eloquently summed up by Samuel Gompers 81 years ago, when he said that labor wants "more school houses and less jails; more books and less arsenals; more learning and less vice; more constant work and less crime; more leisure and less greed; more justice and less revenge; in fact, more of the opportunities to cultivate our better natures. . . ."

The organized efforts of America's working men and women have been instrumental in helping move this Nation a long way towards those goals. Today, the Nation needs their support in a new struggle for productivity—for more purchasing power and less inflation. I am confident that the men and women of the American labor movement know that the struggle against inflation is a joint venture by all segments of the American people and that they will do their part.

On this Labor Day, I say to my fellow Americans who have provided us with so much in the past and from whom we expect even more in the future—thank you.

Pension Reform Bill

The President's Remarks at the Bill Signing Ceremony at the White House. September 2, 1974

Mr. Speaker, my former colleagues in the Congress, Secretary Brennan, Secretary Dent, distinguished leaders in the labor movement, distinguished leaders in business:

It is a great privilege and pleasure for me to have the opportunity of participating in the signing of that massive bill. I think this is really an historic Labor Day—historic in the sense that this legislation will probably give more benefits and rights and success in the area of labor-management than almost anything in the history of this country.

I think it is historic, too, because that tremendous document is indicative of the kind of cooperation between the House and Senate, the House Committee on Ways and Means, and the Senate Committee on Finance, the House Committee on Education and Labor, and the Senate Committee on Labor and Public Welfare.

I think it is indicative of the kind of cooperation that can be achieved between labor and management. I know how hard and how long many people in the labor movement and management have worked to make sure that we came up with the right kind of legislation.

I think it is a good reflection on the relationship between the executive branch on the one hand and the legislative branch on the other. So, when you add it all up, even though this is an extremely complicated piece of legislation, it has been the long labors of many, many people that have produced the kind of result that is good for America and, primarily, for those who will be the ultimate beneficiaries of the legislation.

This legislation will alleviate the fears and the anxiety of people who are on the production lines or in the mines or elsewhere, in that they now know that their investment in private pension funds will be better protected, they have a vested right. They are certain, obviously, of better management of those funds.

It certainly will give to those 30-plus million American workers a greater degree of certainty as they face retirement in the future.

I do want to extend to all of you my congratulations and compliments. I do not think I have had a happier day than the opportunity today to see so many people who have worked so long on legislation of such great significance, and to have it happen on Labor Day is a tribute to the American process, a process which is good for all of us.

Thank you very, very much.

NOTE: The President spoke at 11:40 a.m. in the Rose Garden at the White House. As enacted, the Employee Retirement Income Security Act of 1974 (H.R. 2) is Public Law 93-406, approved September 2, 1974.

Pension Reform Bill

Statement by the President Upon Signing the Employee Retirement Income Security Act of 1974. September 2, 1974

Dramatic growth in recent years has thrust private pension plans into a central role in determining how older Americans live in their retirement years.

From 1960 to 1970, private pension coverage increased from 21.2 million employees to approximately 30 million workers. During this same period, assets of these private plans increased from $52 billion to $138 billion. And they are now increasing at a rate of $12–15 billion a year. It will not be long before such assets become the largest source of capital in our economy.

Yet, this same growth in pension plans has brought with it a host of new problems. Many workers have ultimately lost their benefits—even after relatively long service—because when they left jobs, they thereby gave up rights to hard-earned pension benefits. Others have sustained hardships because their companies folded with insufficient funds in the pension plan to pay promised pensions. In addition, some pension funds have been invested primarily for the benefit of the companies or plan administrators, not for the workers. It is essential to bring some order and humanity into this welter of different and sometimes inequitable retirement plans within private industry.

Today, with great pleasure, I am signing into law a landmark measure that may finally give the American worker solid protection in his pension plan.

Under this law, which is entitled the Employee Retirement Income Security Act of 1974, the men and women of our labor force will have much more clearly defined rights to pension funds and greater assurances that retirement dollars will be there when they are needed. Employees will also be given greater tax incentives to provide for their own retirement if a company plan is unavailable.

It is certainly appropriate that this law be signed on Labor Day, since this act marks a brighter future for almost all the men and women of our labor force.

There are seven essential parts to this legislation:

—first, it establishes major standards for employee participation in private retirement plans, standards which encourage earlier participation by workers, and longer periods over which benefits can be earned;

—second, and perhaps most important to those already under private pension plans, the new law establishes equitable standards for the "vesting" of retirement benefits. The standards under this law will assure to the greatest possible extent that a worker who participates in a plan actually receives some benefits from that plan and does not lose them because of punishing forfeiture standards or inadequate pension fund resources;

—third, the act requires that the fiduciaries who control the pension funds act as reasonable and prudent men, discharging their duties solely in the interests of protecting the beneficiaries of the fund;

—fourth, the law will impose a high standard upon the operation of plans by making mandatory full disclosure of all information concerning the operations of the employer's retirement plan;

—fifth, the tax laws will be revised to provide more nearly equal treatment to different kind of plans. The new law will encourage the self-employed to provide for their retirement by raising the limits on the amount of their income which may be contributed on a deductible basis to a retirement fund. It will also allow the one-half of American employees not covered by private pension plans to enjoy equivalent tax advantages if they set up individual retirement accounts;

—sixth, as a final backstop to private pension plans, a federally sponsored, privately financed Pension Benefit Guaranty Corporation will be set up to pay an adequate retirement benefit to those whose private pension funds have foundered and are not adequate for the beneficiaries; and,

—seventh, the act will establish a limited form of portability of pension benefits by allowing workers to transfer some of their pension benefits to other plans or to their individual retirement accounts.

Together these seven points add up to a better deal for American workers than they have ever known before in private pension plans.

I believe this act is a model of what can be done by the Government to improve the lives of Americans within the private sector without harming the dynamics of our free enterprise system.

I also believe that its passage is a model of cooperation and hard work between the executive and the legislative branches.

The act has its genesis in a message to the Congress by President Nixon on December 8, 1971. The legislation was and is extraordinarily complicated. It was worked on relentlessly by four congressional committees: House Ways and Means, House Education and Labor, Senate Labor and Public Welfare, and Senate Finance.

Individual members have devoted enormous effort to this bill. I believe we can all be proud that the Government has now taken action to make workers' lives more secure.

NOTE: As enacted, the bill (H.R. 2) is Public Law 93-406, approved September 2, 1974.

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